

Award No. 14598
Docket No. MW-12580

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
GULF, MOBILE AND OHIO RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement when it failed to give at least ninety-six hours of advance notice to Messrs. Napoleon Hartfield and Dudley Hartfield whose positions were abolished in force reductions which became effective at the close of work on Wednesday, April 6, 1960.

(2) Each of the claimants named in Part (1) of this claim now be reimbursed for the amount of monetary loss suffered because of being given insufficient advance notice of force reduction on April 6, 1960.

EMPLOYES' STATEMENT OF FACTS: Effective with the close of work on April 6, 1960, the Carrier reduced forces within the Maintenance of Way and Structures Department.

The positions of section laborer held by claimants Napoleon Hartfield and Dudley Hartfield were abolished effective with the close of work 4:00 P. M. on Wednesday, April 6, 1960. Notice of such reduction was not given until about 7:00 A. M. on Wednesday, April 6, 1960.

Each of the claimants were regular assignees to the respective position from which he was laid off on April 6, 1960. The regular assigned work week was Monday through Friday (excluding holidays).

Because neither claimant was given the required 96 hours' notice, they were unable to exercise displacement rights without suffering the loss of two (2) days' work, as may be noted from the quotation appearing within the following quoted letter:

"April 18, 1960

Mr. S. A. Cooper, Chief Engineer
Gulf, Mobile & Ohio Railroad Company
Mobile, Alabama

CARRIER'S STATEMENT OF FACTS: On September 8, 1959, Claimants Napoleon and Dudley Hartfield, together with six other section laborers, were employed on Section 8 to augment the Carrier's regular Maintenance of Way forces for the purpose of working with the tie replacement equipment that was being used temporarily on that Section. These employees knew and were told that their tenure of employment on Section 8 would only be so long as the tie replacement equipment was being used on Section 8.

On March 24, 1960, the Claimants, as well as the other six section laborers, were informed by the Section Foreman that they would be furloughed at the close of work on April 6, 1960, at which time the tie replacement equipment would reach Mile Post G-90 at the end of Section 8.

A claim is presented alleging that the employees were not given proper advance notice prior to being furloughed on April 6, 1960.

Article IV of the October 7, 1959 Agreement provides:

"Not less than ninety-six (96) hours' notice will be given to regularly assigned employees, not including casual employees or employees who are substituting for regularly assigned employees, who are subject to the rules of the existing collective agreement whose positions are to be abolished before such reductions in force are made, except as provided in Article VI of the Agreement of August 21, 1954."

No claim is presented for the other six employees who were notified on March 24, 1960, that they would also be furloughed on April 6, 1960.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants were regularly assigned section laborers, whose positions were abolished effective with the close of work on Wednesday, April 6, 1960. Carrier did not notify Claimants of such reduction in force until about 7:00 A. M. on Wednesday, April 6, 1960. Neither Claimant was able to exercise displacement rights without the loss of two (2) days' work as a direct result of the inadequate notice given them by Carrier.

Employees contend that Carrier failed to give Claimants the required notice under Article IV of the controlling Agreement between the parties, which reads as follows:

"FORCE REDUCTIONS

Not less than ninety-six (96) hours' notice will be given to regularly assigned employees, not including casual employees or employees who are substituting for regularly assigned employees, who are subject to the rules of the existing collective agreement whose positions are to be abolished before such reductions in force are made, except as provided in Article VI of the Agreement of August 21, 1954."

Carrier contends that Claimants, as well as other members of the section gang, were notified approximately ten days prior to April 6, 1960 that they would be furloughed "as soon as the gang reach Mile Post G-90" and that

such notice met the requirements of Article IV of the Agreement between the parties.

We do not agree with Carrier's contention that Claimants received ten days' notice prior to the reduction in force on April 6, 1960. Article IV of the Agreement specifically requires that Carrier must give regularly assigned employees at least ninety-six (96) hours' notice before abolishing their positions. The alleged notice given by Carrier prior to April 6, 1960 was uncertain as to time or date and solely contingent upon the completion of a particular work assignment. Such notice does not meet the clear and unequivocal requirements of the controlling Agreement.

A purpose of Article IV is to give notice to the employee that he will be furloughed on a stated date in order that he will have some opportunity to exercise his displacement rights. Claimants suffered a loss of two (2) days' work as a direct result of Carrier's failure to comply with Article IV of the Agreement. The claim will be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June 1966.