Award No. 15858
Docket No. MW-14301

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

NEW ORLEANS PUBLIC BELT RAILROAD

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

(1) The Carrier violated the Agreement when it reduced forces by abolishing 36 positions effective with the beginning of work Monday, October 1, 1962, without giving the employes affected thereby "notice not less than five (5) working days in advance of reduction of force."

(2) Each employe (35 in number) who was laid off on Monday, October 1, 1962, be reimbursed for the earnings he would have received had he been allowed to continue working in his respective position for five (5) working days after being notified of the impending force reduction.

(3) The Section Foreman who was laid off in the aforementioned force reduction, and who displaced an Assistant Foreman be reimbursed for any earnings lost during the first five working days after being notified of the impending force reduction.

NOTE: Each claimant and position held at time of force reduction notice is individually identified in Carrier's Bulletin No. 487, dated September 26, 1962, which was posted on the late afternoon of the same date and which represented notification of impending force reduction.

EMPLOYES' STATEMENT OF FACTS: Because a strike of longshoremen was scheduled to occur on October 1, 1962, the Carrier decided to drastically reduce its Maintenance of Way forces, and issued Bulletin No. 487, which reads:

"NEW ORLEANS PUBLIC BELT RAILROAD

New Orleans, Louisiana
September 26, 1962

Bulletin No. 487 was issued on Wednesday, September 26, 1962, and five working days after September 26 would make the claim for October 1, 2 and 3. While Carrier does not concede that five days' notice was required in this case, it believes that the date bulletin was placed should be counted as the first day, resulting in the five working days expiring on October 2.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier by Bulletin No. 487 notified certain named employes that due to an imminent longshoremen's strike they would be furloughed as of the beginning of work Monday, October 1, 1962. The date of the bulletin was September 26, 1962.

The Organization contends that the Carrier was required to give the Claimants five working days' notice in advance of the reduction in force. The bulletin in question was posted on Wednesday, September 26, 1962. Saturday, September 29, and Sunday, September 30, 1962, were regularly designated rest days, and the Claimants were furloughed on Monday, October 1, 1962. Hence, the Organization maintains, the Claimants did not receive five (5) working days' notice. This, they aver, was violative of Article III of the Agreement dated June 5, 1962, which reads:

"ADVANCE NOTICE REQUIREMENTS

> Effective July 16, 1962, existing rules providing that advance notice of less than five (5) working days be given before the abolishment of a position or reduction in force are hereby revised so as to require not less than five (5) working days' advance notice. With respect to employes working on regularly established positions where existing rules do not require advance notice before such position is abolished, not less than five (5) working days' advance notice shall be given before such positions are abolished. The provisions of Article VI of the August 21, 1954 Agreement shall constitute an exception to the foregoing requirements of this Article."

The Organization argues that the only exception to Article III is specifically referred to therein as Article VI of the August 21, 1954 Agreement, which the parties have incorporated into the subject Agreement as Rule 4(c). They contend that two conditions as set forth in Rule 4(c) must be met before the Carrier is relieved of its obligation to give the 5-day notice. They are:

(1) Carrier's operations must be suspended in whole or in part because of emergency conditions therein enumerated, which includes strikes, and

(2) The work which would be performed by the incumbents of the position to be abolished or the work which would be performed by the employes involved in the force reductions no longer exist or cannot be performed.

We agree with the contentions of the Organization on these points, and must further state that the burden of proof is on the Carrier to show by a preponderance of evidence that the exception was to be activated in this case. Carrier has failed to present such evidence.

There is only one dispute between Carrier and Organization that has been previously submitted to the Third Division, National Railroad Adjustment Board, and it is identified as Docket MW-12466. In the handling of this claim, a question developed as to the correct method of progressing claims. By letter dated August 24, 1960, from Assistant General Manager E. L. Mire to General Chairman M. Burrough, Carrier's position on the handling of Maintenance of Way Department claims on the property is clearly stipulated. Copy of this letter is attached and identified as Carrier's Exhibit F. Claim under Docket MW-12466 was progressed as stipulated by Carrier.

Carrier and Organization have adopted the National Agreement dated June 5, 1962 and Article III, Advance Notice Requirements, is quoted as follows:

"ARTICLE III.

ADVANCE NOTICE REQUIREMENTS

Effective July 16, 1962, existing rules providing that advance notice of less than five (5) working days be given before the abolishment of a position or reduction in force are hereby revised so as to require not less than five (5) working days' advance notice. With respect to employes working on regularly established positions where existing rules do not require advance notice before such position is abolished, not less than five (5) working days' advance notice shall be given before such positions are abolished. The provisions of Article VI of the August 21, 1954 Agreement shall constitute an exception to the foregoing requirements of this Article."

Rule 4(c) of current agreement with Organization is quoted as follows:

"RULE 4.

(Chicago Agreement of August 21, 1954)

(c) Rules, agreements or practices, however established, that require more than sixteen (16) hours' advance notice before abolishing positions or making force reductions are hereby modified so as not to require more than sixteen (16) hours such advance notice under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike, provided the Carrier's operations are suspended in whole or in part and provided further that because of such emergency the work which would be performed by the incumbents of the position to be abolished or the work which would be performed by the employes involved in the force reductions no longer exists or cannot be performed."

Organization's claim is not specific, inasmuch as the claimants are not listed, and are merely referred to as those identified in Bulletin 487. Some of the men listed on Bulletin 487 requested that they be allowed to take their vacation commencing Monday, October 1, and they were permitted to do so; therefore, such men were on paid vacation, and not furloughed without pay.

Organization does not stipulate the exact number of days it is claiming. Item (2) of Statement of Claim indicates that they are claiming payment for five working days after being notified of impending force reduction.

The Carrier contends that the claim was not properly appealed on the property to the designated officer whose responsibility is to handle such matters. The evidence before us does not convince us that this claim was improperly processed by the Organization. The converse is true.

Carrier further raises the objection that the Claimants are unidentified and that no specific claim date was made. The evidence, however, is to the contrary. The Claimants, as stated in the original claim filed with the Carrier, identified them as those listed in Carrier's own Bulletin 487. Their identity is, therefore, clear and definite. The dates are also clear and definite and not susceptible to error. Five working days' notice is clearly required, and this was not done.

In conclusion, we hold that Article III of the Agreement has been violated and we will accordingly sustain the claim as submitted.

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 Employes involved in this dispute are respectively Carrier and Employes 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 13th day of October 1967.

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