Award Number 17847
Docket Number MW-18427
NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
LEHIGH VALLEY RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it failed to give at least five (5) working days' advance notice to Track Laborers John Martonyak, Carl Eberts, James L. Steigerwalt, Ralph Kuhns, Carl H. Richter, John Shiffert, Edward Conarty and Claude Shelly prior to the abolishment of their positions at the close of work on Friday, October 20, 1967 and, as a consequence thereof

(2) Each of the claimants named in Part (1) of this Statement of Claim be allowed forty (40) hours' pay at his straight time rate.

EMPLOYES' STATEMENT OF FACTS: Immediately prior to October 7, 1967, the claimants status was that of furloughed employes. On October 7, 1967, the claimants were called back to perform extra work created by a derailment at Penn Haven Junction. This work was performed from October 7 through and including October 16, 1967. Beginning on October 17, 1967, the claimants were assigned to perform routine maintenance work customarily performed by the regular track forces. This work was performed from October 17, 1967 to October 20, 1967, both dates inclusive. The work consisted of opening a drain which had been blocked for approximately six (6) months and assisting a gang that was engaged in a regular maintenance program of raising track. One claimant was used as a flagman on the Track Patrol on October 16, 17, 18, 19 and 20.

The claimants then received a notice dated October 20, 1967 advising them that, upon completion of their day's work on Friday, October 20, 1967, their positions as track laborers at Lehighton, Pa. would be abolished due to the emergency being ended.

The instant claim was presented to Supervisor of Track W. C. Burke within a letter reading:

The eight claimants were definitely in a furloughed status before they were called for extra service, during their performance of extra service and after they had completed the extra service.

(Exhibits Not Reproduced)

OPINION OR BOARD: Prior to October 7, 1967 all of the claimants herein were on furlough. Because of a serious derailment on October 7, 1967 they were called to perform extra work from that date until October 20, 1967 when they were again returned to their furlough status. The emergency which necessitated the assignment ended on October 16, 1967, but Claimants continued to perform work on October 17, 18, 19 and 20, 1967. The work performed on the latter four days was neither incidental or related to the derailment emergency.

Employes contend that the claimants were entitled to notice of five (5) working days prior to October 20, 1967 under Article III of the June 5, 1962 National Agreement. Since the Carrier did not give such advance notice when the positions were abolished, the claimants are entitled to pay for five (5) days.

Article III of the June 5, 1962 National Agreement reads as follows:

> "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 employees working on regularly established positions when 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."

It is also the Employes' position that since the work performed on the latter four days were not related to the derailment "that the Claimants' status was changed to assignment of the performance of regular maintenance work as compared to assignment of extra work brought about as a result of the derailment." In other words, Claimants "were employes regularly assigned."

Carrier contends that only extra work was performed on October 17, 18, 19 and 20, 1967. For this reason, no advance notice was required under the applicable rules.

Section 1 of Article IV of the August 21, 1954 National Agreement gives the Carrier "the right to use furloughed employees to perform extra work." All of the Claimants made themselves available for extra work by complying with the procedure prescribed in Section 2 of said Article IV. The last sentence of said Article IV, Section 2 says that "Furloughed employees so used will not be subject to rules of the applicable collective agreements which require advance notice before reduction of force."

There is no rule in the schedule agreement defining "regular work", "extra work", "regularly established positions" or "regularly assigned employees." There is also no rule defining a "job vacancy" nor is there a rule requiring the bulletining of positions. In the absence of such specific rules and in the absence of a firm established practice on the property, what constitutes "regular work" or "extra work" must be determined from the facts in each particular case.

Here, Claimants were originally called because of an emergency. And they performed such emergency work from Saturday, October 7 through Monday, October 16, 1967. The mere fact that they finished out the week on work not related to the emergency does not of itself constitute a regular assignment. Carrier could have called the Claimants for the four days of extra work under Article IV, Section 1 of the August 21, 1954 Agreement without regard to the derailment emergency. This kind of four day work assignment is not one within the category of "regular".

Prior to the June 5, 1962 National Agreement advance notice of not less than ninety-six (96) hours to "regularly assigned employees" was required under Article IV of the October 7, 1959 National Agreement. The first sentence of Article III of the June 5, 1962 National Agreement amends this to "five working days". It still applies only to "regularly assigned employees" just as the "five working days' advance notice" applies only to "employees working on regularly established positions where existing rules do not require advance notice before such position is abolished." Claimants were not "regularly assigned employees" nor did they work on "regularly established positions" between October 17, 1967 and October 20, 1967. They performed extra work.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1970.

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