

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23517

Docket Number MW-2348

George S. Roukis, Referee

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company
((Northern Region)

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

(1) The Carrier violated the Agreement when it failed to recall furloughed employee David Hensley to fill a temporary vacancy as laborer at Rougemere, Michigan January 22, 1979 through February 20, 1979, both dates inclusive (System File C-TC-766/MC-2512).

(2) Because of the aforesaid violation, David Hensley shall be allowed one hundred thirty-six (136) hours of pay at the laborer's straight time rate and sixteen (16) hours of pay at the laborer's time and one-half rate."

OPINION OF BOARD: Claimant contends that Carrier violated the controlling Agreement, particularly Rules 5(c) and 13(a) when it failed to recall him to fill a temporary's laborers vacancy at Rougemere, Michigan and instead called a junior employee to perform this work on various dates between January 22, 1979 and February 20, 1979.

Carrier contends that it complied with the Agreement since the Track Supervisor, who telephoned his house on January 22, 1979 to ascertain his availability for temporary snow removal work was advised by either Claimant's wife or mother that he was working at the time and would return only to a full time position. It argues that he was properly contacted to perform temporary work, consistent with past notification practices, but Claimant did not want such work.

In our review of this case, we concur with Claimant's position. Rule 5(c) which relates to the recall of furloughed employees, does not provide a separate recall procedure for temporary work assignments. It requires that when forces are increased, vacancies occur or new positions are created that trackmen in furloughed or cut off status, will be recalled in seniority order and then in accordance with a formalized time structured notification procedure. Furloughed employees will be notified by mail or telegram at their last known address. There is no alternative notification provision for temporary positions. Though it might be convenient, practical and expedient for Carrier to telephone contact furloughed employees for temporary work, Rule 5(c) does not provide for

this mode of notification. Moreover, it is not validated by the assertion of past practice.

In Third Division Award 23130 (Referee Searce) which we find conceptually relevant herein, we stated in pertinent part that:

"In contrast, the Carrier asserts a longstanding practice of contacting furloughed employees by telephone relative to returning to duty. It is well established that even where a past practice is proven it cannot offset clear and unambiguous language drafted by the parties to the contrary. In this case, while it may have been the Carrier's practice to contact furloughed employees by telephone - and obviously it is more convenient, this does not relieve the Carrier or its contractual responsibility to do so formally. Such approach as espoused by the Carrier also leaves unanswered the question of the extent of its obligation if a furloughed employee has no telephone."

Carrier was obligated to recall Claimant in accordance with the Agreement's unambiguous procedures and Rule 5(c) does not provide an alternate notification process for temporary work assignments. The Agreement was violated and we will sustain the claim.

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 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,

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1942.

