PUBLIC LAW BOARD NO. 1760

Award No. 4

Case No. 4
File No. MW-MOB-75-22

Parties to Dispute: Brotherhood of Maintenance of Way Employees and Norfolk and Western Railway Company (Former Wabash Railroad)

Statement of Claim: Carrier violated the effective Agreement, December 1, 1963, not limited to the articles and rules of the BMWE agreement, were violated as provided in Rule 4, paragraph (3), when,

1. On September 9, 1975 the Carrier notified M. D. Smith, regular assigned section laborer on the Runnels Truck Gang at the end of his duty on that date he would be furloughed without receiving a 5 day notice that he was going to be furloughed.

2. M. C. Smith should have been given a 5 day notice as provided in Rule 4, paragraph E of the effective agreement.

Therefore, request that this employee be paid 5 days, 8 hours per days additional at his respective rate for the violation in Rule 4, Paragraph E of the effective agreement.

Findings: The Board finds, after hearing upon the whole record and all evidence, that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated February 2, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearings held.

Claimant Laborer, on September 9,1975, was one of a three man Extra Gang #46053 in charge of Extra Gang Foreman, Mr. R. Swarts. He was advised by Foreman Swarts that he was being furloughed at close of work that day. Claim alleges that he wasn't given a five days advance notice required under Rule 4(3) which, in part, provides:

"Except as hereinafter provided, employees regularly assigned on positions covered by this Agreement, will not be laid off in force reduction without at least five (5) working days advance notice..."

Foreman Swarts attests that as a result of notice from his superior that his force would be reduced, he had given notice to his gang prior to their going on duty at 7:00 A.M. on Setpember 3, 1975, that there

- would be a force reduction at the close of work on Tuesday, September 9.

The Employees argued that the notice was not in writing, precise and certain as to Claimant.

The Board finds that Rule 4(e) calls only for advance notice and not, as alleged, written notice. Absent a showing otherwise, we find that Claimant was given advance notice on September 3, 1975, that a reduction in force of the gang in which he was a member was to take place six days later. The fact it was later determined that only one member of the gang should be reduced does not serve to alter the finding.

In the circumstances, we are impelled to deny this claim.

Award: Claim denied.

A. J. Cunningham, Employee Member

G. C. Edwards, Carrier Member

Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Atlanta, Georgia, May 25, 1977.