

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10469
Docket No. 10094
2-N&W-MA-'85

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

That the Norfolk & Western Railway Company violated the Current Agreement of September 1, 1949, as subsequently amended when on April 3, 1981, the herein named Claimants were furloughed without proper notice.

That the furlough was improper and is in violation of Rule 26 of the Current Agreement as subsequently amended by Article III of the June 5, 1962 Agreement.

That the Norfolk & Western Railway Company be ordered to compensate the herein named employees in the amount of eight (8) hours each at the pro rata rate for each day of their work week assignment beginning on April 3, 1981 and continuing to and including April 14, 1981.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Organization contends that Carrier violated Rule 26 of the current Agreement, as amended by Article III of the June 5, 1962 Agreement, when Carrier precipitately furloughed Claimants on April 3, 1981. It argues that Carrier was required to provide 5 days advanced notice before furloughing the employees and charges that Carrier failed to comply with the specified prior notice requirements. It notes that Carrier previously posted a notice on or about March 23, 1981 at the Shaffer Crossing Facility announcing Claimants were being furloughed at the close of business on March 27, 1981, but observes this notice was removed from the bulletin boards on or about March 25, 1981. It maintains that an emergency was not present under the defining criteria of Article II, which permits prompt temporary force reductions and avers that Carrier has not demonstrated that a sudden emergency existed.

Carrier argues that it properly complied with the Agreement since the United Mine Workers strike beginning on March 27, 1981 idled the majority of coal mines in Southwestern Virginia, Ohio, Kentucky and West Virginia. It asserts the strike forced it to furlough a significant portion of its work force since a substantial part of its operations was suspended by the coal miners walkout. It avers that it furloughed Claimants in accordance with Article II - Force Reduction Rule, which provides for temporary force reductions when emergency conditions such as flood, snowstorm, hurricane, tornado, earthquake, fire or labor dispute result in partial or full suspension of operations. This Rule reads as follows:

"Article II

"A. Rules, agreements or practices, however established that require advance notice to employees before temporarily abolishing positions or making temporary force reductions are hereby modified to eliminate any requirement for such notices under emergency conditions such as flood, snowstorm, hurricane, tornado, earthquake, fire, or labor dispute other than as covered by paragraph B below, provided that such conditions result in suspension of a Carrier's operations in whole or in part. It is understood and agreed that such temporary force reductions will be confined solely to those work locations directly affected by any suspension of operations...."

In considering this case, we concur with Carrier's position. As an indisputable proof requirement Carrier is obligated to submit persuasive quantitative evidence supporting its contention that a labor dispute necessitated the temporary suspension in whole or in part of its operations. Without this causative linkage, Carrier would not be permitted to invoke Article II. From the record, it appears Carrier provided ample detailed statistical documentation during the on situs conference depicting the strike's impact on rail operations. A review of the strike's effect indicates a 32% drop in coal hauling and a significant decline in the number of locomotive units serviced and repaired at the Shaffer Crossing Facility. This is an indication of a partial suspension of Carrier's operations.

Arguably, it might be contended that Carrier had sufficient time to furlough Claimants in a more predictable fashion, and thus, should have implemented the temporary layoffs pursuant to Rule 26. While this argument is persuasive, the rippling impact of a strike is often not readily predictable, and emergency induced responses are required to deal with the new operating realities. This was the basic purpose for the incorporation of Article II. Upon the record we are satisfied that Carrier acted consistent with the contemplated intent of the Force Reduction Rule and accordingly, we will deny the claim.

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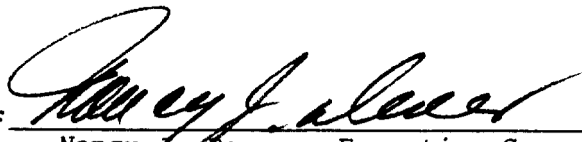
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of July 1985.