

Award No. 611

Docket No. 614

2-ACL-FT-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (FEDERATED TRADES)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That carrier violated Rule 16, all agreements, by closing down locomotive back shops at Rocky Mount, North Carolina, and Waycross, Georgia, for a period of two weeks each, effective August 19, 1940, and September 3, 1940, respectively; also, when again closing the said shops from October 21, 1940, to November 4, 1940. That all employees thus affected are entitled to financial restitution for all loss of time suffered thereby.

EMPLOYES' STATEMENT OF FACTS: The following bulletin bearing the signature of Superintendent Motive Power C. S. Taylor, was placed on bulletin boards, Rocky Mount, North Carolina, August 5, 1940:

BULLETIN

Notice to Employees,
Locomotive Back Shops.

Emerson Locomotive Back Shops will be closed for a two weeks period beginning August 19, 1940. Shops will resume work on Tuesday morning, September 3, 1940.

This will include all Departments of the Locomotive Back Shops. This force will work Saturday, September 7th, in lieu of not working Labor Day, September 2nd.

On date of posting the above stated bulletin, the chairman of the Federated shop committee handled with the superintendent motive power, Mr. C. S. Taylor, the question of whether employees affected in shop closure would be required to file their addresses with management. The superintendent motive power advised the chairman of the committee that his bulletin made reference to a suspension of work and not a reduction in force and, therefore, there was no cause for filing addresses.

Effective with the resumption of work at Rocky Mount, North Carolina, September 3, 1940, a similar suspension of work became effective at Waycross, Georgia, being stated in the following bulletin signed by Master Mechanic C. A. White and approved by superintendent motive power, Mr. James Grant, dated August 5, 1940:

BULLETIN

To Employees in Mechanical Department:

Effective Monday, September 2nd, 1940, the locomotive back shop and blacksmith shop will close down and will not re-open until Monday, September 16th, 1940 at 7:30 A. M.

The carrier submits that the two paragraphs just quoted above represent the only restriction on, or condition precedent to, its right completely to close down a department, a shop, or any sub-division thereof, and that the management as hereinbefore shown has complied with each of these requirements, or conditions precedent.

While Rule 16 is entitled "Reducing Expenses," and while that title would seem by its nature to include or comprehend a case in which a complete shut-down is made, the right of this management to make such shut-down is not in any way dependent upon nor does it grow out of anything contained in Rule 16.

The right to make shut downs has always been with the management, and has been reserved by it, in that it has never been modified or abrogated by any agreement, or assent of the management to any rule covering any class of shop employees, or by any established practice.

The management contends, therefore, that its right to order the shut-downs involved in this case is unquestionable since it has never assented to any rule or line of action in modification or derogation thereof. It is true the management did consent to Rule 16, (G) and (H), of the machinists' and boilermakers' agreements, effective July 1, 1938; Paragraph 3 of supplement to agreement of 1935, effective June 1, 1939, for blacksmiths, electricians, molders, and power house employees; and last paragraph of Rule 16 of agreement, effective December 1, 1935, with the carmen, blacksmiths, electricians, molders and power house employees. These rules are also shown in Rule 16, (F) and (G), of the agreement, effective November 11, 1940, which provides for five (5) days' advance notice thereof, and for a notice to the local chairman of any change in force, which rules the management admits were applicable to the shut-downs involved in this case but with which rules the management has fully complied.

Therefore, carrier contends there has been no violation of the rules of the agreement and respectfully requests the National Railroad Adjustment Board to deny this claim.

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 employe 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.

The parties to said dispute were given due notice of hearing thereon.

Controversy has arisen in the instant case, also in somewhat similar conditions on other railroad properties, about the practice of carrier "closing down shops."

The rule here involved does not refer specifically to the closure of a shop. However, When, in order to reduce expenses and the force is reduced, this may mean a reduction in force of ten, forty, eighty, or one hundred per cent, and even though the entire force is furloughed, the provisions of the rule showing that seniority is to govern and that five (5) days' advance notice is to be given employes, should be complied with.

It is inconsistent with the provisions of Rule 16 to serve notice that a shop is to be "closed down" while retaining in service any number of employes as, obviously, it is a reduction in force so long as any employes are retained for service in the shop.

In this case, as in many others, much if not all of the controversy could be disposed of through closer cooperation of the officers and committeemen. When matters affecting the welfare of the employes are properly discussed, much misunderstanding can be eliminated.

AWARD

Rule 16 shall be applied in accordance with the aforesaid findings. Claim for compensation denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 10th day of April, 1941.