Award No. 1499
Docket No. 1394
2-MP-FT-'52

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Federated Trades)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That under the current agreement the carrier improperly instructed furloughed employes coming within the jurisdiction of the seven (7) Shop Crafts to report for work at 10:00 A. M., Monday, October 24, 1949.

2—That accordingly the carrier be ordered to compensate all employes for time lost from their regular starting period.

EMPLOYES' STATEMENT OF FACTS: The carrier, under date of October 23, 1949, issued to all local supervisors at all points and all crafts on the Missouri Pacific Railroad, instructions that all furloughed employes of their respective crafts should report for service at 10:00 A. M., Monday, October 24, 1949, which instructions were carried out and employes reported as instructed.

This case was handled with carrier officials designated to handle such affairs and said officials verbally agreed on a number of occasions, to allow this claim in toto provided the federation would agree to withdraw companionate case submitted under subject: "Case of the six Shop Crafts and Firemen and Oilers claiming that employes who returned to service on call at 10:00 A. M., Monday, October 24, 1949, concurrently with settlement of strike of the Operating Organizations are entitled to be paid for the full day under the Missouri Pacific current agreement" for obvious reasons to which, of course, the federation could not agree.

The shop craft and firemen and oilers agreements, effective September 1, 1949, are controlling.

POSITION OF EMPLOYES: It is submitted that the carrier, in calling men to work in restoration of forces at 10:00 A. M., Monday, October 24, 1949, violated the rules of the agreements. Rule 2, mechanical sections, states:

> "(a) Where but one shift is employed, unless otherwise provided for, the starting time will not be earlier than 7:00 o'clock nor later than 8:00 o'clock, A. M. or P. M.

end of the strike. The decision to return all necessary employes to work at the termination of the strike at 10:00 A. M. was done in order to avoid any discrimination as between various groups of employes. It was not considered then, nor is it now believed, that starting time rules would apply to situations such as existed on October 24, 1949, and there was no intention to work any hardship on employes previously employed on the first shift by calling them back to work at 10:00 A. M. On the contrary, had it been believed that the starting time rules applied to a situation such as has been described, then the carrier would have had no alternative other than to delay the "call-back" of claimants until the starting time of the first shift, in which event, the claimants here seeking compensation for work not performed prior to 10:00 A. M. on **October 24, 1949,** would not have permitted to return to work until the regular starting time of the first shift, which would have been on **October 25, 1949,** thus losing some 5½ hours of work which they **did** enjoy on October 24.

When the carrier reduced forces in accordance with the applicable agreements on September 9, 1949, due to the strike of train and engine service employes, all rules of the agreements between the parties were thus held in suspension until such time as forces were restored. Forces were not restored until the official termination of the strike at 10:00 A. M. on October 24, 1949, and the rules held in suspension during the strike period were not applicable to the claimants during said strike period and did not again become operative until the strike had ended and forces were restored. Thus, it can be seen that the claimants secured work for compensation which they could not have demanded under any of the rules of the agreements under which they had worked prior to the strike. They should not now be heard to demand that the carrier be penalized for not having done something which it was not required to do and more especially after it took all possible action to return employes to work at as nearly the exact official termination hour and date of the strike as possible, and where, as here, claimants received more compensated work than they were lawfully entitled to receive. These claimants are not now in good grace when they progress such a claim to your Board after the carrier made the effort to return all employes to work as rapidly as possible under the circumstances existing at that time.

This claim should, therefore, be denied as being entirely without support under the provisions of the agreements, and wholly without merit as a matter of equity.

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.

Effective with the close of the day's work on September 9, 1949, due to a strike of train and engine service employes, the carrier made a reduction in force of the major portion, but not all, of its employes in its shops and roundhouses. The employes affected were indefinitely furloughed without abolishment of their positions. At the close of the strike the employes herein involved, who had been assigned to the first shift prior to the strike, were notified by the carrier to return to work at 10:00 A. M. on October 24, 1949, with the result, that limited to this particular day, they worked less than eight hours and started at an hour different than the assigned starting time of their theretofore regularly assigned positions. Thus it appears the sole question involved is whether the carrier's action as detailed was in violation of the effective agreements.

In defense of its action the carrier insists the rules of the agreement have little application to employes off in force reduction during a strike. Conceding this to be true does not answer the question the record presents for decision. Once the employes were called back to work pertinent rules of the agreements became applicable and had to be given full force and effect.

In the present case it must be remembered (1) that existing positions were not abolished but employes were merely furloughed with the intention of returning them to their regularly assigned positions; (2) that the carrier was not required to resume operations and put the employes back to work at 10:00 A. M. on October 24, 1949, but elected to do so on its own volition; and (3) that the current agreements applied to the restoration of forces as made and fixed the rights of the parties.

When the matters just mentioned are kept in mind and considered in connection with the governing facts we are convinced the carrier's action in calling the first shift employes at the hour and on the date in question was in violation of Rules 1 (1) (a) and 2(d) of the shop crafts' agreement and also Rule 2(1)(a) and 2(1)(b) of the firemen and oiler's agreement. It follows the claim has merit and must be allowed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January, 1952.