

Award No. 5216
 Docket No. 4971
 2-IC-EW-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
 DEPARTMENT, AFL-CIO (Electrical Workers)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the current agreement was violated, particularly Article III — Advance Notice Requirements, effective July 16, 1962, when the Illinois Central Railroad Company posted a notice on April 8, 1964, at 2:45 P. M., stating, "In view of the strike of Operating Craft Employees, your position is abolished effective with the end of your tour of duty today, April 8, 1964."

2. That the Illinois Central Railroad Company be ordered to compensate the following Electricians and their Apprentices at the Paducah Shops for sixteen (16) hours' pay, at pro rata rate, for time lost April 9th and 10th, 1964, due to the abolishment of their positions in violation of the controlling agreement:

T. E. Hollan	W. C. Taylor
P. D. Carnes	D. D. Wickert
H. I. Bennett	F. C. Pickett
H. T. Myrick	Mc. D. Simons
M. J. Mauzy	P. H. Kaler
C. L. Mitchell	M. Henley
W. L. McCallister	J. W. Ward
C. H. Lynn	G. W. Smith
E. L. Ayers	Olas Pitt
Wm. Dotson	J. A. Klaffer
W. B. Hook	E. T. Houser
Earl Dotson, Jr.	R. L. Patton
E. M. Slaughter	B. R. Burger
A. T. McGregor	R. G. Shaw

L. T. Lane	C. T. Yopp
H. T. Spees	W. P. Robinson, Jr.
J. C. Chappell	E. F. Grief
J. A. Rogers, Jr.	R. A. Lane
Harry Murphy	John R. Harris
F. W. Rein	B. S. Simons
J. A. Boyd	T. H. Walker
J. B. Hollowell	M. K. Pitt

EMPLOYES' STATEMENT OF FACTS: Electrical Worker T. E. Hollan and the forty-three (43) other Electrical Workers listed above, hereinafter referred to as the Claimants, were working regularly assigned positions on the day shift for the Illinois Central Railroad Company, hereinafter referred to as the Carrier, on April 8, 1964, when the Carrier posted a notice abolishing their positions effective at the end of their tour of duty that day, April 8, 1964. Copy attached as Exhibit A.

The Paducah Shop was not impaired by the strike of the Operating Crafts. There were no pickets set up at this shop.

The work to be performed existed and could have been performed.

The Claimants were entitled to five (5) working days' advance notice before their positions were abolished.

The work at the Paducah Shop would definitely be classed as dead-work. This work was the same work that the Claimants would perform when they were recalled back to service, as evidenced by the notice posted by the Carrier on April 10, 1964. Copy attached as Exhibit B.

POSITION OF EMPLOYES: It is respectfully submitted that the Carrier failed to issue the required five (5) working days' advance notice, nor did they give the required sixteen (16) hours' emergency notice, violating the provisions of Article III — Advance Notice Requirements of the controlling agreement, reading:

"Effective July 16, 1962, existing rules providing that advance notice of less than five (5) working days be given before the abolishment of a position or reduction in force are hereby revised so as to require not less than five (5) working days' advance notice. With respect to employes working on regularly established positions where existing rules do not require advance notice before such position is abolished, not less than five (5) working days' advance notice shall be given before such positions are abolished. The provisions of Article VI of the August 21, 1954 Agreement shall constitute an exception to the foregoing requirements of this Article."

The above rule clearly states that the employes shall be given five (5) working days' advance notice before their positions are abolished. The only exception would be covered by the provisions of Article VI of the August 21, 1954 Agreement which requires a minimum of sixteen (16) hours' notice, in advance, in case of an emergency. The Carrier did not afford the Claimants the five (5) working days' notice, nor did they afford them the sixteen (16)

The typical railroad unionist will not commit an act of disloyalty to fellow union members by working at a strike bound company. The federation tacitly recognized the fact by failing to file claim for most of the shop craft employes who lost pay during the Illinois Central strike and expressly recognized the fact by withdrawing the Burnside claim.

In effect, the federation contends the forty five electricians at Paducah are unique. It contends that these electricians, out of all the Illinois Central shop craft employes who lost time on April 9 and 10, 1964, would report for work despite the strike. There is no evidence to support such a view. Without proof, the claim lacks merit.

(Exhibits not reproduced.)

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.

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

On April 8, 1964, at 2:45 P. M., Carrier notified its electricians and their apprentices at the Paducah, Kentucky Shops as follows:

"In view of the strike by operating Craft employes, your position is abolished effective with the end of your tour of duty today, April 8, 1964."

The critical question posed by this claim is whether or not that notice was proper and in compliance with applicable agreements.

It is uncontroverted that on April 8, 1964, the four operating unions went on strike and that picket lines were established at a number of points on Carrier's property. Whether or not a picket line was set up immediately at the Paducah Shops is not of controlling importance for, in view of the realities of the situation and the terms of the agreements, management had a reasonable basis for anticipating curtailed operations and laying off non-operating employes. In doing so, it was of course necessary for it to observe its contractual commitments.

It is of no significance in the resolution of this dispute that the Employes may have abandoned claims substantially similar to the claim now before us. The question as to which claims are to be filed and pressed is plainly for the Employes in their discretion to determine.

We also do not accept Carrier's conception of the main issue in this case. The real question is whether Carrier has complied with the notice requirements of the agreements and not, as Carrier contends, "whether the claimants would have committed what in the eyes of a loyal railroad unionist would have been a serious act of disloyalty to members of a brother union: working for a strike-bound railroad." This Board's function is to interpret the parties' agreements and in reaching our decisions it is unsound, in our judgment, to

get off into the realm of conjecture as to how employes may or may not behave in a given situation, particularly where as in the present case the parties have dealt specifically and clearly with the question of advance notice.

Article III of the June 5, 1962 National Agreement stipulates that advance notice of not less than five days must be given before a position is abolished or a reduction in force takes place, but that Article VI of the August 21, 1954 Agreement, shall constitute an exception to that requirement. Article VI of the 1954 Agreement expressly deals with the situation where a strike exists and provides that in that situation, not more than sixteen hours' advance notice is necessary, "provided the Carrier's operations are suspended in whole or in part and provided further that because of such emergency the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employes involved in the force reductions no longer exists or cannot be performed."

That Carrier's operations were suspended to a substantial extent is quite apparent. The record is barren of persuasive evidence that work still existed and could be performed by Claimants on April 9 and 10, 1964, despite the strike of railway operating employes. Under the circumstances, Article VI of the 1954 Agreement rather than Article III of the 1962 Agreement, is applicable to the present dispute.

Accordingly, Claimants were entitled to at least sixteen hours' advance notice before their positions were abolished. This does not mean sixteen working hours for the parties were careful in prescribing such notice in emergency situations to omit any qualification as to the sixteen hour period, although in providing for the usual five day notice, they specified five "working days."

It is our conclusion that Carrier violated Article VI of the 1954 Agreement by its notice of April 8, 1964, since the wording of that notice provided for less than sixteen hours' advance notice. Part 1 of the Claim will be sustained to that extent.

The notice was posted at 2:45 P. M. on April 8 and the prescribed sixteen hour period would have expired at 6:45 A. M. on April 9. Since there is no proof that any Claimant would have worked on April 9 prior to 6:45 A. M., Part 2 of the Claim will be denied.

AWARD

Carrier violated Article VI of the August 21, 1954 Agreement, by not giving its employes the prescribed advance notice of at least sixteen hours. Part 1 of the Claim is sustained to that limited extent.

Part 2 of the Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of July, 1967.

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