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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 6412  
Docket No. 6269  
2-MF-CM-'72

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

Parties to Dispute: ( System Federation No. 2, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 21(b) of the controlling agreement as amended by Article III of the Agreement of June 5, 1962, when they arbitrarily withheld carmen employes, DeSoto, Missouri, from reporting for their regular work shift May 19, 20, 21, 1971, without affording them the proper notice of force reduction.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate the carmen employes listed below in the amount of eight hours (8') each at the pro rata rate for each of the dates of May 19, 20, 21, 1971, and in addition to the money amounts claimed herein, the Carrier shall pay Claimants an additional amount of 6% per annum compounded annually on the anniversary date of the claim:

CARMEN MECHANICS AFFECTED

Thomas F. Wilson	Clarence K. Sansoucie	Robert E. Coleman
Harry C. McKay	Leo W. Hogan	Robert L. Lovely
Everett J. Vilmer	George H. Wayes	Robert G. Armstrong
Joseph G. Freer, Jr.	Eli Huskey, Jr.	Stanley F. Dugan
Gilbert L. Dugan	Virgil L. Arbruster	Oscar W. Copeland
George A. Akers	Walter D. Baker	Dale A. Bailey
William J. Westhoff	Carl J. Hahn	Eugene L. Brock
Howard F. Whitehead	Bernard A. Westhoff	Herman C. Woods
Albert F. Micke	Clarence O. Taylor	Herman J. Koch
James B. Huskey	Charles E. Backof	James L. Lynn
Nowell O. Wright	Lloyd E. Sapper	Sam L. Pknsen
Vernie L. McGee	Odis C. Keath	Fred L. Wilson
Arthur C. Ganninger	Paul J. Pope	Thomas W. Yarbrough
Walter T. Johnston	Floyd L. Wallen	Robert N. Walker
Ralph F. Sloan	Harold D. Vaile	Carl A. Johnston
Gordon H. Redfield, Sr.	James H. Bourisaw	Norman R. Sloan
Harvey E. Masson	John D. Williams	Edgar L. Sohn
Lawrence Maloney	Edgar J. Sansoucie	Robert C. Ames
Manuel D. Johnson	John E. Hammon	Walter G. Oker
Floyd C. Oker	Thomas J. Wilkinson	Arnold C. Wagner

Carl F. Baisch	William D. Boley, Sr.	Edgar I. Rencehausen
James L. Christopher	Melvin E. Belfield	Nicholas J. Thebeau
LeRoy A. Mercer	Charles E. Koch	Claude B. Ballard III
Marvin E. Kite	Kenneth E. Spiker	Lloyd R. Crews
Herman W. Hayes	Sloman J. Eye	Gard D. Wright
Alfred J. McKeever	Chad F. Aubuchon	Kenneth M. Boyer
Albert J. Castello, Sr.	Edwin L. Queen	Joseph S. Battreal
Joseph H. Clark	Roy C. Marten	Louis M. Jose
Frederick A. Schlett	Marvin W. Jinkerson	Madison D. Baird
James B. Stafford	Clarence H. Wright	Roscoe R. Johnson
Milburn L. Wilkinson	Claude B. Ballard	Paul R. Secrets
Roscoe A. Johnston	Ralph R. Wagner	Raymond T. Lewis
Vivian L. Lewis	Carlos D. McAnally	Earnest E. Lucas
Eugene H. Vilmer	Shelby B. Apple	Leonard I. Warden
Perry E. Prather	Lawrence C. Record	Robert J. Marier
Edwin C. Wilkinson	Delmar T. McMullin	Douglas C. McMahan
William I. McCutcheon	William H. Spradline	Harold J. Broombaugh
Joseph E. DeClue	Robert J. Guenther	Vernon H. Beck
Joseph O. Politte	George F. Boyer	Edward M. Wagner
Irwin W. Shepard	Donal O. Tullock	Leo W. Hancock
Thomas W. Sansoucie	Robert L. Hammack	Russell B. Brinley
Johnny A. Price	Harold L. Wickerham	Lawrence L. LaHay
Alfred J. Schlett	Everett R. Brinley	Harold E. Boyer
Phillip D. Settlemoir	Earl D. Johnston	Fred A. Ross
Daniel J. Powers	Golman D. Halter	Clyde J. Boyer
Edward E. Thebeau	George L. Howard	Paul G. Hahn
Orville R. Bone	Otis L. Wilson	Lambert A. Thebeau
		Freeman Bailey

CARMEN HELPERS AFFECTED

Sidney J. Wall	Paul H. Roble	Walter M. Turner
Vern P. Zufall	Robert J. Koch	Julius S. Brown
Earl E. Lewis	Melvin M. Young	Jesse W. Isgrig
John W. Missey	Robert E. Terry	Edward A. Kelzer
Ernest F. Kyle	Homer L. Couch	Louis E. Hayes
Lindell E. Whaley	Jesse E. Peacock	Omar L. Propes
Raymond A. Schillinger	William N. Henderson	Orville E. Wilson
Howard T. Cheatham	Raymond W. Johnston	Walter H. Huskey
Jack A. Dearing	Gleanwood R. Hodge	William H. Johnson
Howard G. Isgriggs	Floyd E. Burns	Carl B. Airsman
David W. Lewis	Ralph H. Garrett	Joseph P. Kramer
Bernard T. Keller	Norman O. Hardin	Homer L. Warden
Donald Bailey	Lloyd J. Danback	Jimney D. Todd
Raymond C. Harris	Homer C. Isgrig	Paul E. Gilliam
John J. Juliette	Raymond F. Dierks	LeRoy Hampton

PAINTER MECHANICS AFFECTED

T. H. Haverstick	R. J. Govero	C. R. Smith
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PAINTER HELPERS AFFECTED

A. J. Grovero	D. M. Wood	C. E. Pratt
J. H. Copeland	R. J. Pashia	M. J. Sanders
L. J. Pinson	W. O. Littrell	G. P. Franklin
		P. Hammontree

CARMEN APPRENTICES AFFECTED

M. E. Coleman	D. P. Boyer	K. T. Schafermeyer
J. R. Warden	W. D. Boley, Jr.	D. T. Pratt
D. D. Shunk	G. R. Hardin	D. E. Blanka
W. E. Leftridge	T. W. Sloan	D. M. Richeson
G. J. Rokan	D. E. Klaus	J. B. Moore
T. W. Hayes	H. E. Pope	J. E. Smith
A. J. Castello, Jr.	S. L. Levall	G. L. Hawkins
M. R. Ehrenberg	R. J. Sansoucie	R. E. Sanders
L. C. McMahan	J. L. McKee	J. L. Mercer

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 were given due notice of hearing thereon.

Claimants in this matter are 143 Carmen Mechanics, 45 Carmen Helpers, 3 Painter Mechanics, 10 Painter Helpers, and 28 Apprentices employed regularly on the first shift at the Carrier's DeSoto, Missouri Shop. It should be noted that there are additional claims in behalf of employees represented by this Organization as well as employees of other crafts all employed at the three car shops of the Carrier; these claims are being held in abeyance pending the resolution of this dispute.

At 6 A.M. Monday, May 17, 1971, the Signalmen's craft went out on strike on a national basis; Claimants honored the picket line. Carrier's operations were suspended totally at this location and in part at other locations. At 1 P.M. Tuesday, May 18, 1971, the Carrier posted a notice in the shop temporarily reducing the force. At about 11 P.M. May 18, 1971, the President signed the Joint Congressional Resolution ending the strike. At 7 A.M., May 19, the Claimants reported for work but were not permitted to return by the Carrier. After three working days, the forces were restored on Monday, May 24, 1971.

The Rules relating to reduction in force go back to 1919 with numerous subsequent amendments and interpretations. Article VI of the August 21, 1954 Agreement became the basis for the current agreement language in Rule 21(b) as follows:

"(b) If the force is to be reduced, four working days' notice will be given the men affected before reduction is made and lists will be furnished the general and local committees except no more than sixteen hours' advance notice is required before abolishing positions or making force reductions under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike, 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 employees involved in the force reductions no longer exists or cannot be performed."

NOTE: If it is found necessary to close shops at Sedalia or DeSoto for a certain number of days during the month this is permissible by serving as much advance notice as possible. During such temporary shutdowns sufficient number of men may be retained to take care of emergency work, such emergency force to work regular bulletined hours.

This Rule was modified first by the June 5, 1962 agreement; Article III states:

"Article III - Advance Notice Requirements

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 employees 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."

A further change was negotiated in 1970 and embodied in Article II of the agreement signed April 24, 1970:

"Article II - Force Reduction Rule

Insofar as applicable to the employees covered by this agreement, Article VI of the Agreement of August 21, 1954 is hereby amended to read as follows:

(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,

snow storm, 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. It is further understood and agreed that notwithstanding the foregoing, any employee who is affected by an emergency force reduction and reports for work for his position without having been previously notified not to report, shall receive four hours' pay at the applicable rate for his position.

(b) Rules, agreements or practices, however established, that require advance notice before positions are temporarily abolished or forces are temporarily reduced are hereby modified so as not to require advance notice where a suspension of a carrier's operations in whole or in part is due to a labor dispute between said carrier and any of its employees.

The foregoing amendment is effective April 24, 1970."

The Organization claims that the emergency ended at 11 P.M. on May 18, 1971 and for Claimants to be furloughed, Carrier was obligated to give five days advance notice under Rule 21 (b) as amended by Article III of the June 5, 1962 Agreement. First as to the emergency, we do not believe that a stroke of the pen can terminate the state of emergency instantly; it normally would take some time to restore operations. As an analogy, we do not believe that shut-down caused by an emergency due to a blizzard or a flood, for example, ends automatically when the last snow flake has fallen or when the high water mark has passed. Furthermore it is clear that Article II (b) of the April 24, 1970 Agreement is controlling in this situation, rather than Rule 21(b). It is evident that an advance notice of furlough to men already on furlough is not provided for in any Rule.

The crux of the matter is whether the Carrier had the right in this temporary reduction in force, under the provisions of Article II (b) of the 1970 Agreement, cited above, to recall its employees three days after the labor dispute (which caused the reduction in force) had been ended. In this case the Carrier stated unequivocally that: "This temporary force reduction served the purpose of reducing costs in order to keep expenses in line with the reduced revenues caused by the strike and permitted the orderly resumption of work in the shops following restoration of normal operations of trains and other services throughout the system."

We must distinguish our findings in this case from our conclusions in Second Division Awards Nos. 2195, 2196 and 6112 since the events in those cases took place prior to the 1970 Agreement which is controlling in this case. As we said in Second Division Award No. 6411, which parallels this matter, we are not empowered to change or re-write the Rules. We find that:

1. The parties have put no limitations upon the duration of a temporary force reduction in the Rule negotiated in 1970. Such limitations are not unknown in this industry; for example in the Protective Agreement of February 1965 a provision exists requiring recall of employees temporarily laid-off upon the termination of the emergency.

2. Implicit in the Rule is good faith on the part of the Carrier.
3. There is no evidence of vindictiveness on the part of the Carrier.
4. We do not believe that the reinstatement in this case was unreasonable or contrary to the Rule.

Although we have no basis for questioning the motivation of the Carrier in this case, we must emphasize that we will not condone the punitive extension of any temporary lay-offs caused by strikes.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: E. A. Killens  
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November, 1972.