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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6482
Docket No. 6335
2-WFE-CM-'73

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (Railway Employees' Department
(A. F. of L. - C. I. O.
((Carmen)
(
(Western Fruit Express Company

Dispute: Claim of Employees:

1. That under the controlling agreement, the Carrier improperly furloughed the forces at St. Paul, Minn., on May 18, 1971.
2. That accordingly, the Carrier be ordered to compensate these employees for eight (8) hours at their applicable rates of pay for May 18, 1971.

Findings:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Carrier is a refrigerator car line, owned by Burlington Northern, Inc. and furnishes its owner railroad refrigerator cars, services related thereto including maintenance and repair thereof. The Carrier, Respondent herein, maintains a car building, repair and servicing facilities at St. Paul, Minnesota, where Claimants herein are employed. The movement of refrigerator cars into, out of and in the yard at St. Paul, Minnesota is performed by employees of Burlington Northern, Inc. with equipment of that Carrier.

On May 17, 1971, a nation wide strike by railroad Signalmen ensured, directly affecting Burlington Northern, Inc. and bringing that railroad's operation to a halt. The St. Paul Yard of Carrier continued to function on May 17, 1971, but toward the end of the day shift, notice was posted that the operations at the Yard would cease and the employees would be on temporary furlough for the duration of the strike. The Signalmen's strike was called off as a result of the signing by President Nixon, during the night of May 18, 1971, of a Joint Resolution of Congress ordering its cessation. Claimants were recalled to work on May 19, 1971.

Petitioner charges that Carrier improperly withheld claimants from work on May 18, 1971, there being, it claims, sufficient work in the St. Paul Shop which claimants were ready, willing and able to do. The inability of Burlington Northern, Inc. to move cars in no way affected the work which was in

process on May 17 and could have continued to be done on May 18, there was therefore no emergency condition which resulted "in suspension of the Company's operations in whole or in part", according to Petitioner.

The Carrier avers that the unavailability of Burlington Northern, Inc. services due to the strike made normal functioning of the St. Paul Yard impossible and that this fact caused a suspension of operations in part in the Yard permitting it, under Rule 22(e)(a) of the controlling agreement to make a temporary force reduction without greater notice than was given to claimants.

The impact of the Signaller's strike has been dealt with by this Division of the Board in three recent Awards (6411, 6412 and 6431). Therein it was established that "emergency conditions" within the meaning of Rule 22(e)(a) existed as a result thereof. At the end of the day shift, May 17, 1971, Carrier herein had no way of knowing what the duration of the strike would be. Therefore, there might not be a need for the cars in the shop for some period of time and they might not be moved out when work on them was completed. Neither Rule 22(e)(a) of the Agreement or the caveat of Emergency Board 106 in its recommendations relative thereto seek to compel management to perform wasteful, inefficient and unnecessary work.

The switching operation was shut down due to the strike and this constituted a suspension of the Company's operation in part. Someone had to make a decision as to whether the continuation of work on cars at the St. Paul Yard during the strike could serve any purpose; the need and demand for them being at best questionable. Petitioner presented an exhibit marked "F" with its submission. We are unable to evaluate the significance of the information afforded therein, it appearing that this was a communication between the local Chairman and General Chairman of the Organization. There is nothing in the record before us to indicate that a copy thereof was transmitted to Carrier and that it was the subject of any discussions during the processing of the claim on the property. In Third Division Award 10601 (Dolnick) and Awards cited therein, it was held that such communications are "self serving and can not be accepted as evidence ...".

The determination of these factors must perforce be made by those with a complete overview of all of the circumstances and conditions, which in structure, obviously is the Management. Hindsight might indicate that their action was not quite right, but at the moment of decision on May 17, 1971, when great uncertainty prevailed, it was not improper. In so holding we are not in full accord with the Carrier's view that it has unilateral authority to determine what it will do in such circumstance and may only be restrained from "flagrant abuse" of its power. This Board has long set forth the concept that the exercise of discretionary powers must not be arbitrary, capricious, or unreasonable. In addition, when Rule 22(e)(a) is invoked, we must be satisfied that objective standards are met and the action taken was free of the unacceptable criteria outlined by Emergency Board 106 when it proposed the revisions which brought about the new Rule 22(e).

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In view of the foregoing, it must be found that conditions and circumstances when prevailing permitted the Carrier to cease working at its St. Paul, Minnesota Yard on May 18, 1971 with notice to its employees in accordance with Rule 22(e)(a).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killen

Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1973.