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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6513
Docket No. 6367
2- KCS-CM-'73

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: System Federation No. 3, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)

Kansas City Southern Railway Company

Dispute: Claim of Employes:

1. That the Kansas City Southern Railway Company violated the controlling agreement as amended, when they arbitrarily withheld Carmen employes, Deramus Yard, Shreveport, Louisiana, from reporting for their regular work shift May 19, 1971. And that the Kansas City Southern Railway Company improperly compensated Mr. W. T. Hurt, Carman, for working his rest day, May 19, 1971.

2. That accordingly the Kansas City Southern Railway Company be ordered to compensate the Carmen employes listed below in the amount of eight (8) hours each at the pro rata rate for May 19, 1971, and Mr. W. T. Hurt for four (4) hours at pro rata rate for May 19, 1971, and in addition to the money amount claimed herein, the Carrier shall pay claimants an additional amount of 6% interest per annum, commencing on the date of this claim.

Carmen	Carmen	Apprentices
A. L. Fontville	R. W. McMillian	Gene W. Parker
W. H. Zachry	H. R. Collinsworth	S. R. Sanders
G. D. Kent	S. S. Carbone	W. C. Creighton
A. R. Chandler	J. R. Strong	T. E. Hicks
J. M. Downs	V. C. Humphrey	M. Mims
G. D. Sanders	B. G. Thomas	C. E. McDonald
J. E. Glaze	W. D. Gross, Jr.	E. R. Michael, Jr.
J. E. Hughes	W. E. Mares	L. C. Williams
J. W. Hatfield	R. R. Goss	R. L. Gross
R. C. Tuggle	C. E. Cundiff, Sr.	Danny E. Nation
E. J. McCoy	J. E. Foster	L. W. Borland
B. C. Barnette	R. P. Tyler	Terry L. Shofner
R. R. Peterson, Jr.	R. G. Fossman	

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.

As a result of the strike by Signalmen on May 17, 1971, the Carrier reduced its forces at Deramus Yard in Shreveport, Louisiana. The positions in question were abolished as of 12:01 A.M. on May 18, 1971. At 10:40 P.M. on May 18, President Nixon signed Joint Resolution 100 ending the strike.

The Claimants were called back to work in stages with the full forces being restored to service May 20, 1971.

The organization alleges that the manner by which forces were called back failed to follow the seniority rule set out in Rule 17.

Rule 17

> "When new jobs are created or vacancies occur in the respective crafts the oldest employees in point of service shall be given preference in filling such new jobs or vacancies that may be desirable to them. All vacancies or new jobs created will be bulletined. Bulletins must be posted five (5) days before vacancies are filled permanently. Employees desiring to avail themselves of this rule will make application to the official in charge and a copy of the application will be given to the local chairman."

The Carrier called the forces back in order of seniority shifting to the employment of the regular incumbents on the later shifts on May 19. Regular incumbents were used on all shifts May 20th.

One of the claimants, who was a senior employee, was called back to work on Wednesday, May 19, which was one of the rest days of his regular assignment so he is claiming that he should have been paid at the punitive rate for working that day.

From an examination of the records, it appears to this Board that the Carrier acted in good faith and attempted to bring all employees back to work as quickly as possible and in accordance with the established seniority practice. Once forces have been properly reduced there is no limit of time on the reduction. The question then becomes one of good faith in exercising the right given the Carrier under the agreement.

Award 6412 (Lieberman) affords us the following language which this Board has previously adopted:

> "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."

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We wish to emphasize the final paragraph of Mr. Lieberman's Award relative to 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. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June, 1973.