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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6514
Docket No. 6368
2-FGE-CM-'73

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

Parties to Dispute: (Carmen, Railway Employees' Department
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(Fruit Growers Express Company

Dispute: Claim of Employees:

1. That under the controlling agreement the Carrier improperly furloughed the forces at Lakeland Shop 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 the evidence, finds that:

The carrier or carriers and the employe or employees 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 May 17, 1971, the Brotherhood of Railroad Signalmen struck the major railroads including the Seaboard Coast Line which serves the Fruit Growers Express repair shop at Lakeland, Florida. Pickets were established at many Fruit Growers Express locations which its employees refused to cross.

Effective May 18th the entire force at the Lakeland shop was furloughed. The claimants alleged that there was sufficient work in the shop to keep the force working on the day of the furlough.

The company bases its right to reduce forces in the manner described on Rule 22(e) which we quote in part:

"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 the Company'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."

Referee Lieberman in Award 6411 properly dealt with the same instance arising out of the Signalmen's strike in applying the identical rule. We quote from that award:

"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 19, 1970.

The Organization argues that the vast majority of the work that Claimants were regularly assigned to do was available before the strike, during and after the strike. This position would be persuasive, particularly in the light of prior awards (Second Division Awards 2195, 2196 and 6112) if the provisions of Article VI of the Agreement of August 21, 1954 were in effect. However, Article II of Public Law 91-226 quoted above specifically superseded Article VI, eliminating the basis for the claim.

As the language of Rule 22 (e) is applied to the instant matter, we find that once the labor dispute resulted in a suspension of the company's operation, in

Form 1
Page 3

Award No. 6514
Docket No. 6368
2-FGE-CM-'73

whole or in part at Lakeland Shop, the company was within its rights to reduce forces irrespective of whether some of the work was still available.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. McQueen

Executive Secretary

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