

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Fruit Growers Express Company

Dispute: Claim of Employees:

1. That the Fruit Growers Express Company violated the controlling agreement; specifically Rules 21 and 22, when the Alexandria Car Building Shop temporarily shut down by notice dated September 28, 1978 without affording the affected employes five (5) working days' notice, and Carrier proceeded to pay off employes after the close of the first shift.
2. That accordingly, the Fruit Growers Express Company be ordered to compensate all employes on the Alexandria Shop seniority roster, who were not off due to sickness or vacation, one day's pay at their applicable hourly rate for September 29, 1978, and following employes who were not notified to return to work on October 2, 1978 be compensated for each additional lost up to and including October 3, 1978, Carman T. R. Oakes, Ernest Haynes, D. I. Hunt and Harold Gatewood.
3. That each of the aforementioned employes who were held over beyond their regular quitting time for the purposes of paying off be compensated in the amount of one hour's pay at the time and one-half rate.

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.

The Carrier is a refrigerator car line which furnishes refrigerator cars and related services to its owner railroads. Its services are limited to these activities and they do not operate or move rail cars or equipment. One of its car building and repair facilities is located in Alexandria, Virginia. The refrigerator cars that the Carrier builds and repairs move in and out of the Alexandria facility on tracks owned and serviced by The Richmond, Fredericksburg and Potomac Railroad Company (RF&P).

On September 28, 1978, the RF&P was subject to picketing by one of its unions. This picketing caused a cessation of service and operations on the RF&P. The Carrier, after being apprised of this event, made the decision to temporarily shut down the Carrier's operations at the Alexandria shop. At somewhere between 3:00 and 3:30 p.m., on September 28, a bulletin was posted indicating that all positions were discontinued until further notice as a result of the work stoppage against the RF&P.

This claim involves the application and interpretation of Rule 22. The pertinent portions are quoted below:

"Reduction of Forces

(b) Five working days' notice will be given employees affected before reduction is made and list will be furnished to local committee.

(e) 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) above, 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 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.

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 the Company's operations in whole or in part is due to a labor dispute between the Company and any of its employees."

The claim requests, among other things, that all employees adversely affected by the discontinuance of operations be made whole from September 29 until the restoration of services. The Organization contends that no emergency condition existed at the time the Carrier discontinued services. They further argue that Rule 22 only allows Carrier to make such reductions in the event of a bona fide emergency. They assert that the Carrier at no time submitted any evidence that their operations were suspended in whole or in part or that the work of the employees who were furloughed did not exist or could not be performed. Their arguments emphasized that in their opinion the shops could still have worked during the work stoppage. They assert that in the past the shop had worked a number of days, when building new cars, without deliveries from the

RF&P. They also contend that there were sufficient materials in the shop to build 100 cars and that a minimum of two weeks work was available in the form of light and heavy repairs.

The Carrier argues that the disruption of the RF&P operations did in fact result in "emergency conditions" within the meaning of Rule 22(e). According to the Carrier, therefore there was no need to give five day working notice to the employees as required by 22(b). The Rule specifically grants the Carrier the right to discontinue operations and lay off employees without notice in the event of a labor dispute. The Carrier contends that they have demonstrated that the emergency conditions resulted "in suspension of the Company's operations in whole or in part". This was so because the Carrier is totally dependent on the RF&P for the movement of cars and materials into, out of, to and from its Alexandria plant. The interruption of the RF&P Switching service to the Carrier's Alexandria facility would have caused it to have become clogged with equipment with no space for it to be moved. The Carrier suggests further that without the RF&P service and the movement it provides cars into and out of the shop, the facility simply could not function in a normal manner.

In reviewing the evidence, it is our finding that the strike did in fact "result in suspension of the Company's operations in whole or in part" (emphasis added). Rule 22 and its application to the Carrier's unique operation has been previously interpreted under almost identical circumstances. See Second Division Awards 6483 and 6514. In Award 6483 the Board was satisfied that an indefinite suspension of the operations of the RF&P and its switching service would in fact cause a suspension of the Carrier's operations in part. As it was stated by the Board in Award 6483:

"The inability of the Richmond, Fredericksburg and Potomac Railroad to render its services to the Yard unquestionably had the consequence of a suspension of Fruit Growers Express' Alexandria Yard operations 'in part' and made it a 'work location directly affected by any suspension of operations ...' (emphasis supplied). At the end of the May 17 day shift, Carrier had no way of knowing the duration of the strike and the emergency stemming therefrom. It therefore rightfully made a judgment concerning the ability of its Shop to continue to function."

Attention is also directed to Second Division Awards 6411 and 6412. Implied in our findings is a rejection of the Organization's argument that the Carrier violated Rule 22 because the Alexandria facility could have still partially functioned during the strike. While it may be true that the facility could have functioned at some capacity, it is clear under the plain and precise language of Rule 22 that the Carrier is relieved of its obligation to give a 5-day notice at affected work locations when its operations are suspended "in part". The suspension of switching services did affect the Carrier's operations in part. It is not necessary for the Carrier to show that its operations were suspended totally before Rule 22 can be applied.

Rule 22 is clear and while the strike had unfortunate consequences for the Carrier and its employees, the agreement must be applied as written.

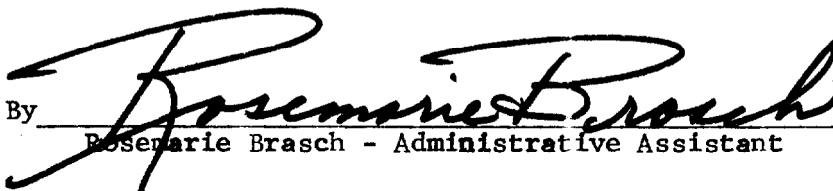
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of February, 1982.