

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

(Brotherhood Railway Carmen of the United States  
(and Canada

Parties to Dispute: (

(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the N & W Railway Company violated the controlling Agreement of September 1, 1949, as subsequently amended when on April 17, 1981, the herein named employees were furloughed without proper notice.

CAR REPAIRERS

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|-----------------|-------------------|
| J. L. Stephens  | C. R. Morton      |
| M. L. Williams  | H. E. Brooks      |
| J. W. Dunn, Jr. | R. L. Barnes, Jr. |
| W. D. Stocks    | J. L. Robertson   |

HELPER CAR REPAIRERS

|               |                    |
|---------------|--------------------|
| C. B. Sowers  | W. P. Hudgins, Jr. |
| P. M. Presley | D. Williams, Jr.   |

2. That said furlough was improper, and represents a violation of Rule No. 26 of the controlling Agreement as subsequently amended by Article III of the June 5, 1961 Agreement.

3. That because of such violation and unjust action, the Norfolk and Western Railway Company be ordered to make the herein named employees whole, by compensating them five (5) days, forty (40) hours each at the straight time rate of pay.

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 employes 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 essential facts in this case are as follows: A strike by coal miners in the Virginia, West Virginia and Kentucky area necessitated force reductions at Norfolk, Virginia, Carrier's major dumping facility, which was implemented in successive stages. A five (5) working day notice was given to 14 upgraded Carmen and 30 Carmen who were furloughed on April 13, 1981; and a similar notice was given to 20 Carmen and 15 Carmen who were respectively furloughed on April 16 and 17, 1981. In these instances, said Carmen were furloughed in accordance with Article III of the Controlling Agreement which provides subject to the explicit exceptions set forth in Article II an advanced notice of five (5) working days. On April 16, 1981 eight (8) Carmen and five (5) helper car repairers were notified that they were being furloughed effective with the close of business on April 17, 1981 and this notice precipitated the instant claim.

In defense of its petition the Organization argues that Carrier had ample time to implement the necessary steps to adjust force structures, since the coal miners strike was a month old before the April 16, 1981 emergency notice was issued. It asserts that Carrier properly observed the furlough requirements of Article III when Carmen were furloughed on the previous occasions, but it takes vehement exception to Carrier's actions on April 16, 1981. In effect, it avers that definable emergency as required by Article II was not present when the emergency furlough notice was issued and consequently, Carrier breached the intended application of the force reduction provisions. It contends that an analysis of Carrier's business decline during the period does not reflect a substantial reduction as argued by Carrier, but instead a slow decline that, by definition, did not warrant an emergency furlough.

Carrier argues that a close analysis of its action pointedly indicates that it made every reasonable attempt to comply with the advanced notice requirements of Article III, but contends that the cumulative impact of the strike created emergency conditions that necessitated an emergency furlough. It asserts that not only had there been a dramatic decrease in gross tonnage miles of 313.74 percent, but observes that the decline had been compounded by the roving bands of union pickets who appeared at non union coal mine sites. It notes that in comparison with the 202 cars of coal dumped on April 16, 1981, only 68 cars were dumped on April 17, 1981.

In our review of this case, we concur with Carrier's position. As a basic Rule and consistent with Second Division Award No. 6611, the burden devolves upon Carrier to establish that reduced operations, which lead to a suspension of activities are directly caused by a labor dispute. This demonstration is an indispensable requirement of the right to invoke successfully Article II. In Second Division Award No. 10135, involving the same parties and the same coal miner strike, we upheld the Organization's petition on the grounds that it could not be determined whether Carrier could not have complied with the advanced notice requirements of Article III. In effect, we concluded that the data was insufficient to ascertain the actual decline in coal hauling business from March 27, 1981 through April 6, 1981. We did note that the coal miners strike did have an adverse effect on coal hauling for the months of April and May, 1981; and also indicated that had Carrier pursued the argument on the property that union pickets at non union mine sites affected coal shipments, we might have found this argument persuasive.

In the case herein, the data shows that the coal miners strike adversely affected operations at Norfolk, Virginia and also that this impact was unpredictable. From the record, it appears Carrier tried to comply to the extent possible with the advanced notification requirements of Article III, but the developing cumulative impact of the strike created conditions that necessitated an emergency furlough (See Second Division Award No. 10469). Moreover, unlike the facts in Second Division Award No. 10135, Carrier did address on the property the negative impact union pickets had at non union mines. In essence, we find that conditions at Norfolk, Virginia on April 16, 1981 warranted the issuance of the emergency furlough notice.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Deves - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of January 1986.

