Award No. 1470
Docket No. MC-1366-67
2-A&S-I-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

UNITED RAILROAD WORKERS OF AMERICA (C.I.O.) (Merged with Industrial Union of Marine and Shipbuilding Workers of America, C.I.O. Maintenance of Equipment Employees).

ALIQUIPPA AND SOUTHERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: Claim of Local Union 1432 of the U.R.R.W.A.-I.U.M.S.W.A.-C.I.O., upon the Aliquippa and Southern Railroad Company that the carrier has violated the terms of agreement as contained in written contract. It is requested that Article X and XII of Agreement dated December 31, 1946 be given full force and effect, in that when forces are reduced, seniority rights shall govern.

Reimbursement to employes E. Barkovac, et al., for four days wages due to four days wages lost, due to the arbitrary action on the part of the carrier, when claimants were furloughed without proper notification specified in the collective bargaining agreement.

Reimbursement of lost wages to employes E. Barkovac et al., and dates listed due to the arbitrary action on the part of the carrier when these senior employes were not permitted to work, while junior employes were working during the period of February 25, 1950 until March 3, 1950 inclusive.

EMPLOYES' STATEMENT OF FACTS: The United Railroad Workers of America—Industrial Union of Marine and Shipbuilding Workers of America, C.I.O. has a collective bargaining agreement effective December 31, 1946 with the Aliquippa and Southern Railroad Company covering maintenance of equipment department.

This claim covers machinists, boilermakers, pipe fitters, painters, welders, electricians, car repairman, car inspectors, carpenters, blacksmiths, including gang leader helpers and laborers.

On February 20, 1950, the claimants' representatives inquired from management would there be a reduction of the maintenance of equipment employes if the coal strike would go into effect February 22, that was contemplated. And also, were they considering a temporary agreement of the work force if there was a reduction.

On February 18, newspapers servicing Aliquippa, Pa., area stated that the Jones & Laughlin Steel Corporation were going to start banking their furnaces Tuesday, February 21, 1950 and operation would be brought to a complete stop by Wednesday, February 22, 1950.

March 3, 1950 and after that time the distribution of available time was properly handled under the provisions of temporary memorandum of understanding dated February 28, 1950; that there was no violation of the agreement or denial of the proper rights of the employes by the carrier; and that the claims for compensation for loss of wages should be denied.

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.

The parties to said dispute were given due notice of hearing thereon.

Carrier is a terminal switching railroad at Aliquippa, Pennsylvania. Most of the work of this railroad consists in serving the plant of the Jones & Laughlin Steel Corporation at that point. The carrier maintains two car shops, one locomotive shop, and terminal. This dispute consists of time claims made by machinists, boilermakers, pipe fitters, painters, welders, electricians, car repairmen, car inspectors, carpenters, blacksmiths, gang leader helpers, and laborers between the dates of February 25, 1950 and March 7, 1950. It is the contention of the organization that claimants were improperly furloughed under the provisions of the controlling agreement. They request that they be reimbursed for time lost to which they were entitled under the agreement.

The record shows that for some time prior to February 20, 1950, the coal miners of the country had been on strike. The Jones & Laughlin Steel Corporation was operating on its reserve coal supply and threatened with a complete shutdown. On February 20, claimants' representatives inquired of carrier concerning a possible reduction of force on or after February 22, 1950, based on report that the Jones & Laughlin Steel Corporation was closing down as of February 21, 1950. Carrier advised that they had no information upon which they could base an answer. On February 22, 1950, carrier received information of a probable shutdown and proposed that possible reductions of force be handled by a temporary memorandum of understanding. On February 23, 1950, a memorandum of understanding was drafted. On February 28, 1950, the memorandum of understanding was signed by the organization's authorized representative. On March 1, 1950, carrier bulletined all positions required to be worked during the shutdown. All other positions were annulled temporarily at 2:59 P. M. on March 3, 1950, in accordance with the express provisions of the temporary memorandum of understanding. On March 7, 1950, the coal strike ended and all employes were called back to their regular positions in accordance with the temporary memorandum of understanding.

The carrier, however, reduced operations due to the coal strike, on February 28, 1950. Claimants contend that as the temporary memorandum of understanding was not effective until March 3, 1950, they were improperly furloughed prior to that date and that, as a consequence they should be paid for the time thus lost. The carrier relies upon the provisions of Article 10 (a) and (b), current agreement, among others, to sustain their position. Article 10 (a) and (b) provides:

> "(a) When the average time made by the employes continues below five (5) days per week for any fifteen (15) day period or when it appears necessary to furlough men, the distribution of available time will be a matter for negotiation between the Committee and the Management, at the Committee's request.
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> (b) Before furloughing men, four (4) days advance notice will be given to the men affected, and a list will be furnished the Committee upon request."

We point out that Article 10 (a) contains two alternatives, either of which requires that the distribution of available time will be negotiated. The first is where the average time made by the employes continues below 5 days per week for a 15 day period. The record shows that this condition did not exist at the time immediately prior to the execution of the temporary memorandum agreement. The second alternative, when it appears necessary to furlough men, is the one affording the basis for the distribution of available time by negotiation. The carrier was required under the provisions of Article 10 (a) to negotiate the distribution of available time. This it did as evidenced by the temporary memorandum of agreement executed February 28, 1950.

Carrier contends, however, that the very wording of Article 10 (a) authorizes it to blank assignments, otherwise the average time made by employes could not possibly be less than an average of 5 days per week. For the sake of argument, we will grant that the carrier may blank assignments if there is no work to be done. But this fact, even if true, does not control the issue here. The carrier contracted with the employes that when it appeared necessary to furlough men it would, at the committee's request, negotiate the distribution of available time. While the carrier undertook such negotiations, it layed off these claimants prior thereto. We think this was contrary to the spirit and intent of Article 10 (a). When the conditions existed as set forth in Article 10 (a), we think that rule prescribes the sole procedure to be followed. If this were not so, the purpose of the rule is defeated and the protection afforded the employes by it becomes illusory only. It is clear to us that the carrier violated Article 10 (a) when it carried out a reduction of force in a manner different from that upon which they had agreed in Article 10 (a). Under the conditions shown, Article 10 (a) prescribed the exclusive method.

Carrier complains of the delay by the organization in executing the temporary memorandum of agreement. Whether such delay was sufficient to warrant carrier to ignore Article 10 (a) we do not here decide but the fact remains that the carrier did agree to reduce force as of March 3, 1950, for the duration of the reduced service requirements of the railroad. By making the agreement it waived any rights it may have had to abandon negotiation under Article 10 (a) because of the delayed execution of the temporary memorandum of agreement.

The claim will be generally sustained. However, some of the claims filed do not appear to be in order for allowance. In this respect we hold that no employe shall be paid more than one day's pay at the pro rata rate for each regular assignment lost. A claimant who actually worked his assignment shall not, of course, have his claim sustained for such assignment. An employe whose claim is for pay for a rest day does not have a valid claim for such day. Claims alleged to have accrued after 2:59 P. M. on March 3, 1950, are not valid unless it can be shown that the carrier assigned junior bidders to the positions bulletined in accordance with the temporary memorandum of understanding. Subject to the foregoing, the claims filed are sustained.

AWARD

Claim sustained per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July, 1951.