Award No. 1738
Docket No. 1603
2-NYC-FT-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.(Federated Trades)

THE NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That at Linndale, Ohio, the Carrier deprived certain employes in the crafts of Blacksmiths, Boilermakers, Carmen, Electrical Workers, Machinists and Sheet Metal Workers of their service rights in the amounts varying from 8 hours, 16 hours and 24 hours within the dates of March 9th, 10th, 11th, 12th and 13th, 1952 in violation of the current agreement applicable to such classes of employes.

2. That accordingly the Carrier be ordered to reimburse such aforementioned employes the full amount of their respective losses of one day or 8 hours' pay, 2 days or 16 hours' pay and 3 days or 24 hours' pay at their respective applicable hourly rates.

EMPLOYES' STATEMENT OF FACTS: At Linndale, Ohio, the carrier made the election without proper notice to cancel the right of certain employes to fill their regular assignments, beginning with some on March 9, 1952, and ending with others on March 13, 1952, both in the car department and in the locomotive department. The nature and time of instructions issued by the carrier to these employe claimants in the car department are submitted herewith and identified as Exhibits 1, 1(a) and 1(b). The statement of the committee at the end of Exhibit 1 reveals that they received Mr. King's notice to abolish all positions in the car department at 3:30 P. M., Monday, March 10, 1952. However, the nature and time of instructions that were issued by the carrier to the employe claimants in the engine house are outlined in the attached copy of statement dated August 14, 1952, signed by the duly authorized committeemen of the boilermakers, of the carmen, of the electrical workers, of the machinists and of the sheet metal workers, identified as Exhibit 1 (c).

The names, the classifications, the dates of time losses and the total amount of the hours so lost by these employe claimants are comprehensively identified in the attached:

1. Exhibit A covering the blacksmiths' craft.
2. Exhibit B covering the boilermakers' craft.
3. Exhibit C covering the carmens' craft.

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 and 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.

This claim is based on the fact that carrier, in reducing its forces, did so without complying with the provisions of Rule 27 (b) of the parties' agreement. This section of Rule 27, insofar as here material, provides:

> "Four days' notice will be given employes affected before reduction is made. . . ."

Admittedly this notice was not given.

The factual situation out of which this claim arose occurred at 8:00 A. M. on Sunday, March 9, 1952 when, without advance notice, certain operating employes of the carrier, consisting of engineers, firemen and conductors, went out on strike. On that part of carrier's system affected thereby all operations conducted by these employes ceased. It was immediately thereafter that carrier put into effect the reduction of forces herein involved. Because of the strike, which created an emergency beyond carrier's control, there is no question as to carrier's right to reduce its forces when the work for them to perform no longer existed.

There are no qualifications of, nor exceptions to, the four days' notice requirement contained in Rule 27 (b), nor do we think any exceptions or qualifications thereto are inherent in the rule without their being either contained therein or in some other provision of the parties' agreement which relates thereto. See Awards 372 and 1701 of this Division and 6188 of the Third Division. In this respect we have examined the numerous decisions and awards cited by the parties and with the possible exception of one early decision, we find they all hold that strikes, or results thereof, do not relieve carrier from fulfilling such requirement.

On the basis that the strike created an emergency beyond its control carrier seeks to bring itself within Rule 30 of the parties' agreement, claiming that this Rule is a qualification of Rule 27 (b). Rule 30 provides, insofar as here material, as follows:

> **"Accidents to Shop Equipment.** Employes required to work when shops or any department thereof are closed down due to breakdown in machinery, floods, fires and the like, will receive straight time for regular hours, and overtime for overtime hours."

Rule 30 deals specifically with situations where work ceased to exist because of accidents to shop equipment. We think, to that extent, it is a qualification of Rule 27 (b) when a situation arises to which it has application. When Rule 30 has application we do not think the carrier is required to give employes, whose services are no longer needed because the work they normally perform has ceased to exist, the four days' notice required by Rule 27 (b). It can release them immediately but if it should require any employe or employes affected thereby to perform work during the period such condition continues to exist it must pay them according to the provisions of Rule 30. See Award 1701 of this Division.

We can only apply Rule 30 to situations covered thereby. In that regard we call special attention to the fact that the rule involved in our Award 1701 contained the express language when shops or yards are closed down

"Due to Emergencies." Here the title to Rule 30 refers to "Accidents To Shop Equipment." Significantly the rule refers to three specific situations that would have that effect namely, breakdown in machinery, floods and fires. However carrier seeks to bring itself within the language "and the like." In the sense here used that language relates to conditions similar to those specifically referred to in the rule itself; that is, conditions which result in the shop equipment being put out of physical use. By no logical reasoning can a strike be said to have that effect nor can it be said that it results in an accident to the shop equipment. In fact, the physical equipment was fully capable of being used. No situation existed to which Rule 30 has application.

Under the situation existent on the carrier it may seem extremely harsh to require payment of this claim but we can only interpret and apply the provisions of the agreement the parties have entered into. We have no equity powers to relieve from a harsh situation nor is it our prerogative to rewrite the rules of an agreement by means of an award.

It should be understood that individual claims should be limited to the time such claimant actually lost from his regular assignment by reason of the carrier's failure to give the notice. In no instance should such allowance be for more than four days.

AWARD

Claim sustained but individual rights of any claimants affected are limited as in the Findings set forth.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1954.