Award No. 1739
Docket No. 1604
2-CCC&StL-CM-'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.54, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RY., THE
(The New York Central Railroad Company, Lessee)

DISPUTE: CLAIM OF EMPLOYES: 1. That within the seniority districts in the territory of Indianapolis, Indiana, the Carrier deprived certain employes of the Carmen's Craft of their service rights in the amounts varying from the minimum of five and one-half (5½) hours to the maximum of sixteen (16) hours on one or the other or both of dates of March 10th and 11th, 1952, in violation of the current agreement.

2. That, accordingly, the Carrier be ordered to reimburse such employes the full amount of their respective losses occurring on either or both of the aforesaid dates at their applicable rates of pay.

EMPLOYES' STATEMENT OF FACTS: In the territory of Indianapolis, Indiana, various seniority districts exist and therein the carrier maintains such work locations as Brightwood, Hill Yards, Shelby Street and West Side. However, in these locations the carrier made the election to cancel the right of certain employes in the carmen's craft (herein after called employe claimants) to either fill out working or to begin working their respective assignments on Monday and Tuesday, March 10 and 11, 1952.

The names, the classifications, the dates on which loss of time resulted and the total hours of work losses of each of the employe claimants referred to in the statement of claim are comprehensively identified in the Memorandums submitted herewith and identified as Exhibits A, B, C, and D.

The dispute has failed of settlement with the carrier on any acceptable basis and the agreement of October 1, 1923, revised May 1, 1948 and as subsequently amended effective September 1, 1949, is controlling.

POSITION OF EMPLOYES: It is submitted as disclosed in the foregoing statement of facts that the carrier improperly deprived these employe

1920 to the federal manager, C. C. C. & St. L. R. R. (party to the instant dispute), the pertinent part of which read as follows:

> "Employees **should** be notified, **if possible,** before reporting for duty when shop is shut down due to causes specified in Rule 30. Employees worked two hours and then relieved on account of shop being shut down, due to causes specified in Rule 30, should be paid for **time actually worked."** (Emphasis added).

This answer was made to an inquiry as to how employes who had worked less than a day (in this case only 2 hours) should be paid when a shop was closed down due to an emergency as referred to in National Agreement Rule 30 (current Rule 27). The assistant director's reply, just quoted, clearly indicates that in such situations the employes are not entitled to "Four days' notice" or even to a minimum day of 8 hours, but only to pay for the time actually worked, which on that occasion amounted to only 2 hours.

That a strike has always been considered an emergency under force reduction rules similar to that involved in the instant dispute is established without question by Docket JE-572, of Railroad Board of Adjustment No. 2, dated at Washington, D. C., July 10, 1919. Briefly, that case involved a claim for pay for time lost because the specified advance notice had not been given employes who had to be sent home because a strike of power plant employes had suddenly cut off the steam supply necessary for the operation of machines, forges, and other tools. The Board in that case denied the claim of the employes for pay for time lost. This decision was issued under the authority of the director general of railroads, United States Railroad Administration.

Thus, in accordance with the interpretation originally placed upon the rule by the authority who promulgated the rule, the provision respecting the giving of advance notice of force reduction was not intended to be applied in cases where operations were stopped due to breakdowns, floods, fires and STRIKES.

It is the position of the carrier in this case that a work stoppage due to a strike of employes was a condition beyond the control of the parties to the same extent as breakdowns, floods and fires and that such a condition was contemplated by the language "and the like." Such having been the interpretation of these rules when they were originally adopted and nothing having transpired during the intervening years to change this application, the parties are still governed thereby. Under these circumstances, the present claim will be seen to be without merit.

The claim should be denied in its entirety.

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.

This docket involves the same factual situation as was involved in Docket 1603 on which our Award No. 1738 is based, although under a different agreement. However, the language of the rules involved in that docket are the same as here except as to the numbers thereof. Consequently what was held in our Award No. 1738 is controlling here. In view of that fact the claim here made should be sustained.

AWARD

Claim sustained.

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.