Award No. 2195
Docket No. 2022
2-NWP-MA-'56

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. 114, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Machinists)

NORTHWESTERN PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement the Carrier on November 11, 1954 improperly furloughed and suspended from the service 44 Machinists, 26 Machinist Helpers and 2 Machinist Apprentices, employed at Sonoma, South Fork, Tiburon, Willits and Eureka, California.

2. That the Carrier be ordered to compensate the 44 Machinists, 26 Machinist Helpers and 2 Machinist Apprentices for all time lost from November 11, 1954, to the date they were restored to service on December 6, 1954.

EMPLOYES' STATEMENT OF FACTS: The Northwestern Pacific Railroad Company, hereinafter referred to as the carrier, elected to reduce the force in its entirety of machinists, machinist helpers and machinist apprentices employed at Sonoma, South Fork, Tiburon, Willits and Eureka, California. The aforementioned employes of the machinist craft, hereinafter referred to as the claimants, were regularly employed by the carrier, in accordance with the provisions of the controlling agreement.

On or about 9:15 A. M. on Wednesday, November 10, 1954, the carrier issued notices that effective 6:00 A. M., November 11, 1954, the claimants were being laid off due to reduction in force. This is substantiated by copies of the notices submitted herewith and identified as Exhibits A, B, C, D, E, F, G, H, I and J.

The claimants were returned to the service of the carrier on Monday, December 6, 1954.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

exists to sustain the instant claim. As established by carrier's statement of facts, emergency existed as a result of engineers going on strike and claimants were given in excess of the required sixteen hours' advance notice of their being laid off.

In handling the claim on the property, the petitioner cited in support of the instant claim Rule 28(c) of the current agreement, which reads as follows:

> "(c) Five (5) days' notice will be given all employes who are to be laid off and lists furnished the committee."

As hereinbefore established, Article VI of the August 21, 1954 agreement, **to which the petitioner is a party,** specifically provides that:

> **"Rules, agreements or practices, however established,** that require more than sixteen hours' advance notice before abolishing positions or making force reductions **are hereby modified** so as not to require more than sixteen hours such advance notice under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike . . ." (Emphasis supplied.)

It is, therefore, clairly evident that insofar as emergencies such as strikes are concerned the provisions of Section (c) of Rule 28 are modified by Article VI of the August 21, 1954 agreement, and that Section (c) is neither applicable nor involved in this claim.

The Board's attention is directed to the fact that even if the claim in this docket were valid under the provisions of Section (c), Article 28 of the current agreement (carrier does not so concede but expressly denies) the claimants would only be entitled to five days starting from date of notice, less any rest days.

CONCLUSION

The carrier asserts that the claim in this docket is entirely lacking in either merit or agreement support and therefore requests that said claim if not dismissed, 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.

The organization contends carrier improperly reduced its forces of machinists, machinist helpers and machinist apprentices at Tiburon, Willits, Eureka and Sonoma, California, when it failed to comply with Rule 28(c) of their effective agreement when doing so. Rule 28(c) provides, when forces are to be reduced, that: "Five (5) days' notice will be given all employes who are to be laid off * * *."

Carrier admits laying off the employes for whom this claim is being made as of 6:00 A. M., Thursday, November 11, 1954 by bulletins posted at 9:15 A. M., on Wednesday, November 10, 1954. The reason it gave in such bulletins for reducing forces and laying off claimants was the lack of work and stoppage of revenues that would result from the strike of its engineers. However, it contends doing so was proper by reason of the terms of Article

VI of the National Agreement of August 21, 1954, which was in effect on this carrier, since the Brotherhood of Locomotive Engineers threatened to and did go out on strike at 12:01 A. M., on November 11, 1954 which resulted in a complete stoppage of carrier's operations except for trains then en route which proceeded to their respective terminals. The strike was settled at 12:01 A. M., on December 6, 1954 at which time the employes herein involved returned to work.

Article VI provides as follows:

> "Rules, agreements or practices, however established, that require more than sixteen hours advance notice before abolishing positions or making force reductions are hereby modified so as not to require more than sixteen hours such advance notice under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike, provided the Carrier's operations are suspended in whole or in part and provided further that because of such emergency the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employes involved in the force reductions no longer exists or cannot be performed."

It will be observed that carrier is not required, under this article, to give more than sixteen hours' advance notice when making reduction of its forces because of emergency conditions from various causes therein enumerated, which include strikes. However, this right has two requirements which must exist before it can be properly exercised. First, the emergency conditions must cause the carrier's operations to become suspended in whole or in part. That was true here. Second, that because of such emergency conditions the work which would ordinarily be performed by the incumbents of the positions to be abolished, or by the employes involved in the force reduction, no longer exists or cannot be performed. If the work that would normally be performed by the employes being laid off continues to exist and is such that it can be performed by them, regardless of the strike, then the mere fact that service revenues would be cut off by the strike would not authorize the carrier to abolish the positions and reduce its forces in accordance with the provisions of Article VI. If such is true carrier would be obligated to give the notice required by Rule 28(c).

It will be noted that when carrier reduces its forces that the provisions of Rule 28 (a) require that each point, shop, department or subdivision shall be considered separately. The record shows there was sufficient work available at Tiburon which the employes laid off there could have performed which would have kept them busy for more than five (5) days after carrier's operations ceased, but the same is not true as to Sonoma, Willits and Eureka. In view thereof we find the notices given to the forces laid off at Sonoma, Willits and Eureka were proper but that at Tiburon Rule 28(c) should have been complied with.

The claim, as originally made on the property, sought to recover for all time lost, starting November 11, 1954, up to and including the expiration date of the force reduction. After the men returned to work the claim was limited to that date, which is the limitation put on the period for which compensation is asked as the claim is presented here. However, we think, because of the terms of Rule 28(c), the claim for compensation must be limited to five (5) days since that is the length of time within which carrier could properly have reduced its forces thereunder. See Award 1738 of this Division for a like holding.

Carrier contends the claim should be dismissed because it does not name the individuals for whom the claim is being made although who they are is clearly evidenced by the notices posted by carrier, copies of which are attached to the organization's original submission here. The claim is made on behalf of certain classes of employes who, it is claimed, were improperly laid

off in force reduction. The basis of the claim was consistently adhered to in all stages of its handling and carrier was at all times fully aware thereof. When it has been determined whether or not the basis for the claim is sound then, if it is found that it is, the determining of who is entitled to be paid is merely a ministerial duty and can easily be determined from the carrier's records. We think the form of the claim, as here made, is neither vague nor indefinite but desirable. It does not clutter up the records, which would be the situation if individual claims were filed. Neither does it unduly burden this record with a list of names that would serve no purpose. Doing so is neither required by the rules of the parties' schedule agreement nor by the rules covering procedure here.

It would appear that the organization is endeavoring to now include in its claim some motor car repairmen. Since such employes were not included in the claim as handled on the property we cannot allow them to be included at this stage of the proceedings.

We find the twenty-eight (28) machinists, seventeen (17) machinist helpers and two (2) machinist apprentices who were employed at Tiburon on the day the notices were posted are entitled to be compensated for every workday they lost in the five (5) days following 9:15 A. M., Wednesday, November 10, 1954, when the notices were published which had the effect of laying them off. However, if, as indicated by the carrier, some of these employes were off because of vacation, sickness or injury they should be compensated only if they would, in the normal course of events, have returned to duty before the five (5) days had expired. If the latter is the situation they are entitled to be paid for such workdays as they actually lost during the five (5) days because of not being permitted to return to work. It should be understood that if rest days of any of these employes would have fallen on any of the days of this five (5) day period such employes would not be entitled to pay for such rest days nor would that fact extend the five days of the period required for the notice. Nor would these claimants be entitled to be again paid for a workday for any day of their assignment on which, during this five (5) day period, they work and were paid.

It should be understood that in determining the extent of the compensation to which each claimant, for whom the claim has been sustained, would be entitled to five days' notice required should be applied as follows: if his shift began on or before 9:15 A. M., then the five days would apply to 11/11, 12, 13, 14 and 15, 1954 whereas, if it began after 9:15 A. M. it would apply to 11/10, 11, 12, 13 and 14, 1954.

As to all other claimants the claim is denied.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August, 1956.