Award No. 4090

Docket No. 3911

2-TLFD-EW-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION NO. 8

TOLEDO LAKEFRONT DOCK COMPANY

DISPUTE: CLAIM OF EMPLOYES:

The specific charge against the carrier comes in two parts of the Agreement — Article II, Section 1 and Article III, Section 2A.

This grievance involves 7 men. The remedy sought in this disagreement is recovery of the Saturday or sixth day of the regular work week ending December 3, 1960; and a ruling as to whether the lay-off notice was legal and proper.

EMPLOYES' STATEMENT OF FACTS AND POSITION: The carrier—The Lakefront Dock Company posted a bulletin which it contends is proper and proceeded to give a forty (40) hour week for the men involved.

Local Union No. 8, International Brotherhood of Electrical Workers, contends this notice is not proper; and notified the carrier to this effect on December 1, 1960.

The specific charge against the carrier comes in two parts of the Agreement — Article II, Section 1 and Article III, Section 2A.

This grievance involves 7 men. The remedy sought in this disagreement is recovery of the Saturday or sixth day of the regular work week ending December 3, 1960; and a ruling as to whether the lay-off notice was legal and proper.

The last meeting with the carrier on this issue was January 2, 1961; and the company refused to take further action.

CARRIER'S STATEMENT OF FACTS: A layoff notice was handed Braynard Meeker, Local 8 Union Steward, on November 25, 1960. This notice was dated November 26, 1960. The effective date was 7:00 A. M. December 1, 1960. The number of men covered by the notice was seven employes repre-

"The arbitrator has been asked to rule on the interpretation of Article II, Section 1, that 'Loading crews shall be kept on for six days as scheduled **unless the layoff procedure is followed**, or by mutual agreement another decision is reached.' Therefore, the Arbitrator rules in this matter that if a man works at all on a regular loading or unloading scheduled week from Monday on he is entitled to such full week to Saturday, inclusive, and to the premium pay for Saturday. However, if for some reason loading or unloading work is discontinued, employe or employes if offered work to fill out the week must accept this work to be entitled to such 48 hours and Saturday time and one-half benefit, provided no rates or benefits conferred by this contract are lost to him by such transfer of work. **However, if layoff notice is served at any time prior to start of regular work week, it shall not be presumed to guarantee another six day week, but only the duration of the layoff time.**" (Emphasis ours.)

As the arbitrator noted in his decision, the employe who starts a regularly scheduled 48 hour week is guaranteed a 48 hour week provided a layoff notice is not posted prior to the start of the regular work week. If a layoff notice is posted prior to the start of the week, the employe is not guaranteed another 48 hour week, but only for the duration of the layoff time, in the instant case through Wednesday, November 30, 1960.

SUMMARY

The carrier respectfully submits that the claim of the seven employes for pay for Saturday, December 3, 1960, should be denied on the basis of

(a) The clear meaning of the contract language,

(b) Past practice over a period of ten (10) years, and

(c) The arbitrator's award in a similar case involving employes of the carrier at this same dock.

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.

Parties to said dispute were given due notice of hearing thereon.

The Carrier's work consists of the loading of coal and the unloading of ore at docks; it therefore fluctuates with coal and steel operations and weather conditions and finally terminates with the close of Great Lakes shipping by winter.

The Agreement provides (Article II, Section 1):

"The regularly scheduled work week shall be forty-eight (48) hours per week; that is, eight (8) hours per day from Monday to Saturday, inclusive, * * *.

"The regularly scheduled work week during the winter repair season shall be forty (40) hours per week; that is, eight (8) hours per day from Monday to Friday, inclusive."

The mode of transition from the 48-hour to the 40-hour week is not specified, but since 1950 the Carrier has given notice in accordance with Article III, Section 2-A, which reads in part as follows:

"A four (4) day notice will be given of any layoff by reason of force reduction to any employe on the roster."

Accordingly, on Saturday, November 26, 1960, Carrier gave notice that effective Thursday morning, December 1, 1960, seven named employes "are laid off of the loading crew and will report on repair work" at that time, "and will be on the 40 hour week schedule."

The grievance as stated on the property was quite sketchy but alleged that "this notice is not proper; * * *. The specific charge against the carrier comes in two parts of the Agreement — Article II, Section 1 and Article III, Section 2A. * * * The remedy sought in this disagreement is recovery of the Saturday or sixth day of the regular work week ending December 3, 1960; and a ruling as to whether the layoff notice was legal and proper."

In two arbitration proceedings under similar contracts of the Carrier with the United Mine Workers of America and with the International Longshoremen's Association, respectively, similar notices given before the start of the work-week were held valid for the purpose, and as noted above, the practice has been followed since 1950. But the Employes' brief contends:

"The carrier is attempting in this dispute to use the above quoted Article III, Section 2-A of the current agreement to reduce a part of the employes covered by the agreement from a forty-eight (48) hour work week to a forty (40) hour work week. As you can see this article and section is only to be used when a force reduction occurs. There is no provision in this article regarding the reduction of a work week."

Thus, the objection is that since the notice of loading crew reduction was immediately followed with the notice of employment in repair work, the force was not actually reduced, and the rule was therefore not applicable; in other words, that to make it applicable, the Carrier should actually have reduced the forces by holding the Claimants out of service, and then reemployed them later in repair work.

But it is unnecessary to inflict that result upon the Claimants, or to penalize the Carrier for not doing so. If in fact Article III, Section 2-A was not applicable, the Carrier would not have violated the Agreement by not giving the four days' notice; but it does not follow that it violated the Agreement by giving the notice. It is true that this rule does not specify what notice is required for the reduction to the 40-hour work-week; but neither does any other provision of the contract. In the absence of any such contract provision this Board is not authorized to hold insufficient for that purpose the notice agreed upon by the parties for force reductions.

The additional argument is made that by the four-day notice given on Saturday and effective the following Thursday, a work week which started

on Monday was thus improperly shortened from six to five days. But both parties cite one of the arbitrations mentioned above in which it was held:

> "However, if lay-off notice is served at any time prior to start of regular work week, it shall not be presumed to guarantee another six-day week, but only the duration of the lay-off time."

To hold otherwise would be to require a seven day notice before the start of any employe's repair work season, which the Rules do not require.

The loading crew layoff notice was given in this case, and after the lay-off time the claimants immediately started repair work, which the Rules do not forbid.

No violation of the Agreement has been shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1962.