

Award No. 4113
Docket No. 3869
2-GN-CM-'63

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:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated Article V of the August 21, 1954 Agreement, and accordingly claim should be allowed as presented.

2. That under the current agreement the Carrier on July 13, 1959 improperly furloughed from the service 35 carmen, 7 helpers and 1 carman painter at Allouez, Wisconsin.

3. That the Carrier be ordered to compensate the 35 carmen, 7 helpers and 1 carman painter for each day, July 15 and 16, 1959 account not giving proper notice of force reduction as provided in Rule 5 (b) of the current agreement. Names and time claimed by claimants are listed as follows:

Men listed below request payment of 8 hours pay for July 15 and 16, 1959, totaling 16 hours pay each:

Carmen

Stanley Gall
Anthony LaBoy
Horace L. Brown
Robert J. Sislo
Thomas Ritsche
Edgar Hesselgrave
Robt. H. Van Damme
Hjalmer J. Ramstad

Carmen Helpers

Arthur Guist
Oscar Benson
Joseph Odlevak
Mame A. Ahistus
Alice J. Brochu
Antoinette Carr
Elsie E. Hesselgrave

Carmen (cont.)

Alphonse Heirman

Thomas W. Gage

Patsy J. Bozzo

James Carroll

Glenn A. Johnson

Leo Daniels

Stephen Hapy

Clifford Niva

Vern Oaks

Russell McNamara

Mike Onifer

Frank J. Homick

Elmer Williams

Oswald Sather

Benhart W. Toya

Edwin A. Neman

Douglas O. Harty

R. Guschinski

A. Dolsen

Carman Painter

Henry Juno

Men listed below request payment of 8 hours pay for July 16, 1959:

Carmen

Frank Paulus

Charles Heirman

Joe Ligman

Joe Ritsche

Gust Rass

Frank Carlson

Thomas Glonek

John Matesky

EMPLOYEES' STATEMENT OF FACTS: The 35 carmen, 7 helpers and 1 carman painter, hereinafter referred to as the claimants, are employed by the Great Northern Railway Company, hereinafter referred to as the carrier, at Allouez, Wisconsin.

The carrier on July 13, 1959 abolished all jobs in the Allouez Department and furloughed all employees effective with the closing of their shift July 14, 1959. The National Steel Strike, the alleged emergency causing the furlough, did not take place until July 15, 1959.

The carrier recalled 12 carmen on July 14, 1959 for inspection work in the yards. The carrier had sufficient bad orders cars to employ the remainder of the men for the two days July 15 and 16, 1959.

posted until after the officially publicized strike deadline if the carrier's operations are in fact suspended prior to that time.

3. There is nothing in Article VI of the August 21, 1954 National agreement which prevents a 16-hour notice of force reduction for the majority of employes merely because a small amount of work is performed later.

4. There is no merit to the new general chairman's contention that the carrier did not properly decline the claims on December 7, 1959.

For the foregoing reasons, the carrier respectfully requests that the claims of the employes 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.

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

By its express terms the applicability of Article VI of the Agreement of August 21, 1954, requiring only sixteen hours' notice of force reductions, is limited by provisos, one of which is as follows:

"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." (Emphasis ours.)

While the continuance of the strike might well result in making the work non-existent or in preventing its performance, the emergency resulting from its being called did not do so.

The record shows that over one hundred bad order cars were on hand. The carrier did not deny this, but stated that there would be no need for ore cars until the strike was over; that some or all of them might never be needed again; that it was for management to decide what, if any, cars to repair; and that "the number on hand, if any, certainly would have been insufficient to keep the entire force busy for 4 days." (Emphasis ours.) This certainly does not constitute an allegation that over one hundred bad order cars would not have kept eight of the claimants busy for one day, July 16th, and the others for two days, the 15th and 16th. On the contrary, the carrier stated:

"Obviously, a majority of the claimants would not have been employed in the first place if there were not a normal number of bad order cars on hand."

In other words, since bad order cars are a normal occurrence, and it is management's responsibility to operate efficiently, the normal size of the

force is obviously determined by the normal flow of this work. Although management has the prerogative to decide whether under given circumstances current work need be performed, the question under Article VI of the August 21, 1954 Agreement, is not whether "because of such emergency" the work can wisely be postponed, but whether because of it the work "no longer exists or cannot be done". Awards 2195 and 2196.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of February 1963.