Award No. 4167
Docket No. 4153
2-P&LE-TWUOA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when the award was rendered.

PARTIES TO DISPUTE:

TRANSPORT WORKERS UNION OF AMERICA, RAILROAD DIVISION, A. F. of L. — C. I. O.

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY and THE LAKE ERIE & EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

Claim is herewith presented in behalf of the senior available furloughed carmen for: "Eight (8) hours at the applicable rate for each day less than seven (7) Car Repairmen were used on first shift at the Gateway Car Shop." The work forces on the first shift at Gateway Car Shop on certain days have been reduced to six (6) Freight Car Repairmen and this is a violation of the Memorandum of Understanding dated October 1, 1958 between the carrier and the organization covering Seven-Day assignments at Gateway Car Shop. This is being filed under provisions of Rule 38(f) of the controlling agreement and is to be retroactive to sixty (60) days from December 27, 1960 and is a continuing claim until such time as the violation ceases to exist.

EMPLOYES' STATEMENT OF FACTS: This case arose at Youngstown, Ohio and is known as Case Y-158.

The organization and the carrier did enter into a Seven-Day Agreement dated October 1, 1958. This agreement was violated when the carrier cut the force and did not use the amount of men as specified by contract.

The Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement, effective May 1, 1948 and revised March 1, 1956 with the Pittsburgh & Lake Erie Railroad Company and the Lake Erie & Eastern Railroad Company, covering the carmen, their helpers and apprentices (car & locomotive departments), copy of which is on file with the Board and is by reference hereto made a part of these statements of facts.

POSITION OF EMPLOYES: On October 1, 1958 the organization entered into an agreement with the carrier as to how many employes would be used

Award 3444

"* * * The claim as presented for electrician J. W. Benton requests compensation for the work lost at the overtime rate. The overtime rule has no application in this case, so we, therefore, order the carrier to compensate Mr. Benton for 12 hours lost to him because of the improper assignment of his work, at the pro rata rate."

See also Awards 3256, 3259, 3272 and others of the Second Division, as well as Award 3193 and numerous others of the Third Division, National Railroad Adjustment Board.

CONCLUSION

Carrier's position may be summarized as follows:

1. Claim is vague, indefinite and lacking in specificity;

2. Carrier attempted to secure the concurrence of the organization in arriving at a mutually agreed upon number of seven-day assignments to be worked at Gateway Car Shop;

3. After the local committee failed to agree with the carrier as to the force to be worked, carrier had no alternative but to retain the force at a level consistent with business conditions, and

4. Awards of the National Railroad Adjustment Board support carrier's position.

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.

On October 1, 1958 the Carrier and the Organization entered into an Agreement pertaining to the number of employes to be used on seven-day assignments at Carrier's Gateway Car Shop, Struthers, Ohio. The pertinent portions of that Agreement are as follows:

1. **"Gateway Shop, Struthers**

7 Freight Car Repairmen	First Shift
5 Freight Car Repairmen	Second Shift
2 Freight Car Helpers	First Shift
2 Freight Car Helpers	Second Shift

2. "Seven-day work forces to be increased or decreased only upon agreement with the local committee and management as business increases or decreases and as operating requirements vary."

In July, 1960, the Carrier, by its own admission and without prior consultation with or the agreement of the Local Committee, reduced the number of first shift Carmen from 7 to 6 on certain days.

On December 27, 1960, a claim was filed with the Carrier's Master Mechanic — CAR. The latter in his reply to the Local Chairman, dated December 30, 1960, suggested that the Local Committee meet with General Foreman Peters and attempt to resolve the dispute.

Carrier Representatives met with the Local Committee on January 10 and 27 and February 28, 1961, in unsuccessful attempts to reach an agreement. International Representative Schawinski, meanwhile, also met with Carrier Representatives on January 30, 1961 and March 24, 1961, in an unsuccessful effort to settle the dispute.

The Carrier proposed reducing the force from 7 carmen and 2 helpers on the first shift to 5 carmen and 1 helper. The Organization's proposal was to reduce the force to 6 carmen and 1 helper — which is the first shift force reduction the Carrier initiated in July 1960.

The Carrier contends that its action was required "due to a severe drop in revenue it is imperative that reductions be made". The Carrier also contends that after the Local Committee failed to reach agreement "with the Carrier, as to the force to be worked, Carrier had no alternative but to retain the force at a level consistent with business conditions"; and that the claim fails because it 'is vague, indefinite and lacking in specificity".

The Organization's position is that the Carrier violated the October 1, 1958 Agreement when it reduced the seven-day, first-shift work force at the Gateway Car Shop.

The record indicates that the Carrier did violate the Agreement. Consequently, the only determinations to be made by this Board are:

1. Does the claim fail because it is vague, indefinite and lacks specificity?

2. If not — what penalty shall be invoked against the Carrier?

It is the Board's decision that this claim on behalf "of the senior available furloughed carmen" is descriptively definitive and sufficiently exacting as to enable the Carrier to identify, readily and easily, the Claimants. Furthermore, we maintain that our determination is in keeping with the pertinent language of Rule 38, Paragraph (e) item (2) which reads as follows:

> "All claims or grievances must be presented in writing by or on behalf of the employe involved. . . ."

The Board rules that the Claimants must be compensated at their pro rata pay rate from October 28, 1960, which is 60 days prior to December 27, 1960 — the date on which the claim was filed. — through March 24, 1961, the date on which the parties had their final unsuccessful conference regarding the work force reduction.

When the parties failed to agree on March 24, 1961, we believe that ". . . then and only then, may the management exercise its retained prerogative and assert its responsibility to function by initiating the changes required by actual service." See: Award No. 2722.

AWARD

Claim sustained to the extent set forth in findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March, 1963.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 4167

In Award 4166 involving the same parties as in the instant Award, the Referee found:

> "The claimants cannot readily and easily be identified. In fact, the Board considers the claim improper for determination because it is a scatter-gun or a catch-all claim."

There is no difference in the basic principle involved in Award 4166 and this Award and a like finding should properly have been determined in the instant case.

In this Award the majority states "It is the Board's decision that this claim on behalf 'of the senior available carmen' is descriptively definite and sufficiently exacting **as to enable the Carrier to identify, readily and easily, the claimants.** * * *" (Emphasis ours.) To comply with this Award would require the Carrier to make a search of its records in order to determine, if possible, just who the claimants might be. It is not a function of the Carrier to search its records in order to produce a claim for the employes. Rather it is incumbent upon the petitioner, under Rule 38 (e) (2) to present in writing claims or grievances on behalf of the employes involved.

We dissent.

H. K. Hagerman
F. P. Butler
P. R. Humphreys
W. B. Jones
C. H. Manoogian