Award No. 4411
Docket No. 4054
2-GTW-SM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 92, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Sheet Metal Workers)

GRAND TRUNK WESTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: (a) That under the current agreement all employes of the Sheet Metal Workers Craft at Port Huron, Michigan were furloughed without proper notice and improperly denied the right to work their regular assignments on September 2nd, 1960.

(b) That accordingly the Carrier be ordered to compensate all employes of the Sheet Metal Workers Craft at Port Huron, Michigan, each in the amount of eight (8) hours pay at the applicable straight time rate for September 2nd, 1960.

EMPLOYES STATEMENT OF FACTS: At Port Huron, Michigan, the Grand Trunk Western Railroad Company, hereinafter referred to as the carrier, maintains car shops for repairs to equipment. Nineteen (19) mechanics, five (5) helpers and two (2) apprentices were listed on the sheet metal workers' craft seniority roster, with rights to work at that point, as of September 2nd, 1960. None were in a furloughed status on September 1st, 1960 and all were assigned to five (5) day assigned positions, Monday through Friday, with assigned hours of 7:30 A. M. to 4:00 P. M.

At 1:30 P. M. Thursday, September 1st, 1960, notices were posted on bulletin boards throughout the Port Huron car shops that "due to strike of employes represented by B. of R. T. ALL positions were abolished, effective at 6:30 A. M. Friday, September 2nd, 1960."

None of the employes were permitted to work on September 2nd, 1960. All were re-called for service on Monday, September 12th, 1960.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

service on September 2, 1960, the date for which they are making claim. At no time has the sheet metal workers' organization denied the statement of their traveling representative—that the employes would NOT cross the picket line—neither has the involved organization stated that the employes of that craft WOULD have crossed the picket line. As held by Referee Herbert B. Rudolph in First Division Award No. 6162 and reiterated by Referee Richard F. Mitchell in Award 7341 of the same Division, it is implicit that the men be available for and in a position to accept the service for which claim is being made. Carrier reiterates that at no time has the organization contended that anyone was available for and in a position to accept service on September 2, 1960, the date claimed.

This claim has been handled in the usual manner on the property and declined by the carrier.

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 waived right of appearance at hearing thereon.

Claimants are employes of the Sheet Metal Workers' Craft at Port Huron, Michigan, and contend that they were improperly denied their right to work on September 2nd, 1960, due to Carrier furloughing them without proper notice.

At 1:30 P. M. on September 1, 1960, Carrier posted a bulletin abolishing all positions of Mechanics and Helpers of System Federation 92, effective 6:30 A. M., September 2, 1960. (cf. Ex. "A" of Employes' Submission.) The reason given was a strike by the Brotherhood of Railroad Trainmen, which did occur on September 1st.

The record shows that the Sheet Metal Workers' Craft Seniority Roster at Port Huron listed 19 Mechanics, 5 Helpers and 2 Apprentices, with 5 day assigned positions, Monday through Friday; hours 7:30 A. M. to 4:00 P. M., with none on a furloughed status on September 1, 1960. All were recalled for service on September 12, 1960.

Claimants allege a violation of Rule 22 of the controlling agreement, which reads in part as follows:

> " * * * Four (4) days' notice will be given the men affected before reduction is made, and lists will be furnished the local committee."

Carrier contends that Article VI of the August 21, 1954 National Agreement controls, and that the Claimants had the sixteen hours advance notice for which it calls.

Article VI reads 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 that 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."

Article VI is a modification of Rule 22 of the controlling agreement, and it comes into play under the conditions specified. The condition upon which this dispute turns is the following wording:

" * * * 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."

The record discloses that work for the Claimants did exist on September 2nd, and that this work was in fact performed by them on September 12th and thereafter.

Carrier states that at no time did the Organization contend that anyone was available and in a position to accept service on September 2nd, and further that the Carrier had information the employes would not cross the picket line. These contentions are not borne out by the record before us, and we cannot accept Carrier's mere allegation as proof.

Carrier contends that these claims must fail because of the fact that the Claimants are unnamed, and cites Article V(a) of the August 21, 1954 National Agreement. On this subject, the Carrier Member submitted a detailed Brief, to which the Labor Member filed a formal objection. We have examined the Brief and its contents, and find that our discussion in Award 4410 on this subject is equally applicable here. The Brief which was submitted does not offend our Rules, and the objection is overruled.

To resolve the problem of "Unnamed Claimants," we have examined much pertinent material, including the Awards of this and other Divisions of the Adjustment Board. There is more than one method of filing a claim for unknowns, as evidenced by the Awards which we have examined.

"A "Class Action" as known to the legal profession is unknown to Board practice, and would be in violation of Article V(a); A "Shotgun" charge where the Claimants are unascertainable without winnowing of records after the fact, would be objectionable. Likewise, an attempt on the part of the Organization to find a general violation, and then if successful, to find a suitable Claimant or Claimants would be violative of our procedure.

But in this dispute it is clear from the record who these claimants are. They are the 19 Mechanics, 5 Helpers and 2 Apprentices of the Sheet Metal Workers Craft, listed on the seniority roster at Port Huron, Michigan on September 1, 1960. Their positions were among those of the "ALL" abolished by the Carrier on that date. There is no such lack of specificity here which would proscribe their right to assert their claims.

AWARD

Claim (a) Sustained.

Claim (b) Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February, 1964.