

Award No. 4459
Docket No. 4267
2-URR-USofA-'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:

**UNITED STEELWORKERS OF AMERICA
LOCAL UNION 1913, A. F. of L.—C. I. O.**

UNION RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

This claim represents a general grievance filed by the Organization in behalf of all of its employes in protest of annulments of various positions by the Carrier for one or two days a week at various points under the pretext that such conduct is justified and authorized by Rule 18 of the Labor Agreement which will be quoted below. The basis for this claim is the Organization's contention that the Carrier is misusing and distorting the purpose of Rule 18 and is also abrogating the guarantee of a five-day work week or forty-hour work week by reducing the work week of the various affected employes at the whim and caprice of Management.

EMPLOYEES' STATEMENT OF FACTS: Beginning in January, 1961, the carrier instituted a practice of annulling various jobs at various points in its system for periods of one or two days. The effect of these annulments has been to reduce the work week of the employes from the customary and contractual five-day or forty-hour work week to a lesser work week; sometimes thirty-two hours or four days and sometimes twenty-four hours or three days.

POSITION OF EMPLOYEES: The controversial rule upon which management has attempted to justify its actions is quoted as follows:

"RULE 18 — ANNULMENT OF POSITIONS

(a) When conditions arise over which Management has no control, positions held by regular employes may be temporarily annulled and the affected employes may exercise their seniority. In such instances, the employee shall be notified not less than sixteen (16) hours (excluding Sundays and holidays) in advance of the annulment of his position. An employee whose job is annulled under this rule will return to his former position if and when it is restored

"This Division stated in Award 6748 that:

' * * * the Carrier asserts the rule is that the burden of establishing facts sufficient to permit the allowance of a claim is upon the party who seeks its allowance * * *. There is such a rule, which is frequently applied, and we think the instant case is one requiring its application * * *. Claimant has failed to maintain the burden of establishing his claim and it must be denied.'

"A similar burden has not been discharged here, so therefore, this claim must be denied."

In summary, the carrier submits that the employees' claim should be denied for the following reasons:

1. There has been no violation of any agreement rules.
2. Rule 18 has been applied properly by the carrier from the time it was first negotiated.
3. The scheduling of industry operations is beyond the control of the carrier.
4. Award 47, of Special Board of Adjustment No. 69, fully supports the carrier's position.
5. To uphold the employees' position would require that this Board rewrite an agreement rule. This Board does not have the authority to write agreement rules.
6. The employees have the burden of proving that there has been a violation of agreement rules. This they cannot do.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This is a general grievance filed by the Organization protesting annulments of various positions by Carrier for one or two days a week, contrary to the intent of Rule 18 of the controlling agreement.

Rule 18 reads in part as follows:

"(a) When conditions arise over which the Management has no control, positions held by regular employees may be temporarily annulled and the affected employees may exercise their seniority. In such instances, the employee shall be notified not less than sixteen (16) hours (excluding Sundays and holidays) in advance of the annulment of his position. * * *"

Basically, the Organization contends that Rule 18 was adopted for emergency situations such as fire, floods, strikes or other major catastrophes.

The Carrier contends that the nature of its operation in servicing the steel industry is such that annulment of positions becomes necessary from time to time when that industry's operations are curtailed; a condition over which Carrier has no control. Carrier asserts that this was one of the intentions of the parties when Rule 18 was negotiated.

Both parties have submitted the Findings of Special Board of Adjustment No. 69 in Case 47 which involved an interpretation of Rule 18, and upheld its application upon the suspension of steel mill operations. This is persuasive, but of course, not binding, in our present consideration.

However, our attention is directed to two other instances on the property where the question of whether to apply Rule 18 or Rule 17 (f) (Notice under Reduction of Forces) was involved, due to temporary shutdown of mill operations. In each instance the Organization agreed to the application of Rule 18 rather than Rule 17 (f).

There is sufficient evidence in this record to convince us that one of the conditions "over which the Management has no control" as contemplated by the parties when Rule 18 was negotiated was the curtailment of industry operations. We express no opinion on the allegations of misuse of Rule 18 which run through the Organization's submission, since this was not the issue submitted to us.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1964.