Award No. 4494
Docket No. 4038
2-GTW-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when award was rendered.

PARTIES TO DISPUTE:

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

GRAND TRUNK WESTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the provisions of the current Agreement, the Carrier on September 1, 1960, improperly furloughed and suspended from the service the entire force of Carmen (consisting of Coach and Freight Carmen, Painters and Upholsterers, their Helpers and Apprentices) at the Port Huron Car Shops, effective 6:30 A. M. September 2, 1960.

2. That the Carrier be ordered to compensate these above named employes eight (8) hours at the pro rata rate for such improper furlough.

EMPLOYES' STATEMENT OF FACTS: The Grand Trunk Western Railroad Company, hereinafter referred to as the carrier, on September 1, 1960, elected to furlough and suspend the entire force of carmen (coach and freight), painters and upholsterers, their helpers and apprentices, effective 6:30 A. M. September 2, 1960, by the posting of a bulletin abolishing all positions.

The aforementioned employes, hereinafter referred to as the claimants, were regularly employed by the carrier in accordance with the provisions of the controlling Agreement, effective September 1st, 1949, as subsequently amended.

POSITION OF EMPLOYES: It is submitted by the employes, that the claimants were wrongly furloughed and deprived of their service rights as claimed in the statement of dispute in clear violation of the provisions of the controlling agreement, particularly within the meaning and intent of Rule 22, the first paragraph of which reads:

With particular reference to Article VI of the August 21, 1954 National Agreement, and without prejudice to its previous remarks regarding Article V(a) of that Agreement, carrier had every reason to believe — based on advice given by the traveling representative of System Federation No. 92 and from the general knowledge that members of a non-striking union will not cross a picket line — that employes at Port Huron Shop would not report for duty on September 2, 1960, consequently that Bulletin No. 4, which gave less than 4 days' advance notice of force reduction, was proper under Article VI. Even had the carrier been assured that carmen would cross the picket line, in complete disregard of the statement of their traveling representative, only a detailed study would reveal how many carmen could have been used on September 2, 1960, with due regard to the absence of the shop engine to move cars within the shop; the absence of powerhouse employes to provide power for certain of the tools used by carmen, as well as the absence of members of other crafts who work in conjunction with carmen. As a matter of fact, however, at no time in their progression of the claim on the property, has the organization stated that the claimants (whosoever they may be) were available and willing to perform service on September 2, 1960, the date for which they are making claim. At no time has the carmen's 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.

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.

The Carrier maintains a car shop at Port Huron, Michigan. About 430 employes were employed there at the time here relevant. A majority of them has been represented by various Shop Craft Organizations, among them the Carmen's Organization.

At about 11:00 A. M., September 1, 1960, the Brotherhood of Railroad Trainmen (BRT) called a strike against the Carrier. Picket lines were established at all points leading to the reporting areas of all classes of employes, including the shop craft employes. Shortly thereafter (1:30 P. M.), the Carrier posted Bulletin No. 4 which reads, as far as pertinent, as follows:

"TO MECHANICS AND THEIR HELPERS, Represented by System Federation No. 92 * * *

Due to strike of employes represented by Brotherhood of Railroad Trainmen, positions listed herein are hereby abolished effective as indicated below * * *

Position — All Abolishment

Effective — 6:30 A. M. — September 2nd, 1960."

The Carmen's Organization filed the instant grievance in which it contended that the Carrier improperly furloughed the entire carmen's force (coach and freight carmen, painters, upholsterers, helpers, and apprentices). It requested compensation in the amount of eight (8) hours at the straight time rate for each furloughed member of said force. The Carrier denied the grievance.

1. The Organization seeks compensation for the loss of wages suffered by the employes represented by it on September 2, 1960. Its claim is based on Rule 22 of the applicable labor agreement (see: Organization's submission brief, p. 2 and rebuttal brief, p. 4). This Rule prescribes, in pertinent part, that "four (4) days' notice will be given the men affected before reduction (in force) is made." The Carrier defends its action on the ground that Rule 22 is inapplicable here and that Bulletin No. 4 was justified under Article VI of the Agreement and Memorandum, dated August 21, 1954, which provides, among other things, for not more than sixteen (16) hours' notice in case the work force is abolished or reduced as a result of a strike. In rebuttal, the Organization asserts that Article VI does not protect the Carrier in the instant case because there was sufficient work in the car shop which could have been performed by the furloughed employes on September 2, 1960. There is no need to resolve said disagreements between the parties because we are of the opinion that the claim at hand is untenable for the reasons hereinafter stated.

2. The basis of the instant claim is the Organization's contention that the employes in question were deprived of their regular compensation for September 2, 1960, as a result of the Carrier's failure to give four (4) days' notice in accordance with Rule 22. It is self-evident that the claim is sustainable only if the employes were available for work and willing to work on said day. If they were not, they obviously were not entitled to compensation irrespective of whether or not the Carrier complied with the requirements of Rule 22 or Article VI. The Organization must, therefore, demonstrate that the employes would have reported for work and were willing to work on the day under consideration, but were not permitted by the Carrier to perform their regular assignments in violation of the applicable contractual provisions.

3. It is beyond dispute that the Carrier gave at least sixteen (16) hours' notice as prescribed in Article VI. It is also undisputed that the BRT picketed the car shop on September 2, 1960. The pivotal question which thus emerges is whether the record in this case justifies the finding that the employes in question would have crossed the picket line and reported for work on said day. The answer is in the negative.

Picketing is a method of social control conventionally used by unions in furtherance of a labor dispute. Specifically, unions regard picketing as an indispensable adjunct of strikes because the successful outcome of a strike largely depends on the success of the strikers in dissuading employes from entering the premises to work. An important objective of picketing is to accomplish this. See: Chester A. Morgan, **Labor Economics**, Homewood, Illinois, The Dorsey Press, Inc., 1962, p. 459. It is a fact commonly known throughout the industrial world as well as throughout the jurisdiction in and for which this Board is sitting that unionists do not generally cross a

picket line established around a strike-bound enterprise as a manifestation of union solidarity and unity of action. This fact is indisputable and beyond question. It is universally reaffirmed by the unimpeachable testimony of competent authorities as evidenced by the following representative examples which could easily be augmented:

> "In general, crossing a picket line of another union is perhaps the most heinous offense against trade union morality. To the good union man, honoring a picket line — no matter whose — represents the most elementary expression of union solidarity, and the man who crosses another union's picket line is only second to the scab as an object of scorn and as a transgressor of union morality." See: Jack Barbash, **The Practice of Unionism,** New York, N. Y., Harper & Brothers, 1956, p. 230.

> "The average worker will not pass a picket line. This is based partly on the fear of social ostracism, partly on the feeling that unless he supports this group on strike they may not support him some day when his union is out on the street, partly on fear of physical violence, sometimes because of fear of sanctions contained in the constitution of his own union." See: Gordon F. Bloom and Herbert R. Northrup, **Economics of Labor Relations,** 4th Ed., Homewood, Illinois, Richard D. Irwin, Inc. 1961, p. 734.

> "The tradition of the picket line among unionists has developed to the point where it has an aura of almost religious sanctity. Union members everywhere are loath to cross a picket line, a fact which greatly strengthens the hand of striking unions." See: Pearce Davis and Gerald J. Matchett, **Modern Labor Economics,** New York, N. Y., The Ronald Press Company, 1954, p. 270.

> "Fully as important as violence and intimidation in effectiveness if not more so, is the 'taboo' that has been built up among trade unionists against crossing a picket line. Springing from the notion that 'an injury to one is the concern of all' and carefully nurtured through the trying years when the very movement required the loyalty and support of all unionists, it has not only survived into a period when the movement is protected by law, but has remained * * * virulent * * *." See: Comenico Gagliardo, **Introduction to Collective Bargaining,** New York, N. Y., Harper & Brothers, 1953, pp. 443-444.

> "No self-respecting union man will cross a picket line, any picket line, not only through fear of gibes and in some instances of physical violence, but because of a deep acceptance of the principles of unionism." See: Henry S. Gilbertson, **Personnel Policies and Unionism,** Boston, Mass., Ginn and Company, 1950, p. 286.

In the light of the above findings of recognized researchers as well as of our own knowledge of the realities of industrial life, we take official notice of the fact that, irrespective of the motivations of individual workers, union members will not usually cross a picket line. This is particularly true with respect to railroad unionists because of their traditional loyalty to union philosophy and ideals. Said fact requires no evidentiary proof, since it is one of such public concern or notoriety that it is known generally by all informed or interested persons. See: Porter v. Sunshine Packing Corporation of Pennsylvania, 81 F. Supp. 566, 575 (USDC, W. D. Pennsylvania, 1948);

Clarence M. Updegraff and Whitley P. McCoy, **Arbitration of Labor Disputes,** 2nd Ed., Washington, D. C., BNA Incorporated, 1961, pp. 166-167 and cases cited therein. Hence, the Carrier is excused from the burden of proving such fact by producing witnesses or other evidence because the fact has already been established. See: Charles T. McCormick, **Handbook of the Law of Evidence,** St. Paul, Minn., West Publishing Co., 1954, p. 687 and cases cited therein. Insofar as we have expressed a different opinion in our Award 4411, we no longer adhere thereto.

Applying the above principles to this case, we have reached the following conclusions:

The record is barren of any evidence or indication that the employes in question would have crossed the picket line of the BRT with disrespect to time-honored union codes of behavior and morality. On the contrary, the evidence on the record considered as a whole persuasively demonstrates that they would not have done so. In its strike notice of August 24, 1960, the BRT stated, among other things, "the cooperation of the other contracting organizations on the property, in observing our picket lines, has been requested, and it is expected their membership will so agree." Moreover, the traveling representative of the Organization declared a few days after the start of the strike, but while it was still in progress "we would not expect our members to cross the picket lines at the peril of life and limb."

In summary, we are satisfied that the employes in question would not have crossed the picket line and reported for work on September 2, 1960. Accordingly, the instant claim is without merit. See: Arbitration Award in re F. K. Trucking Company, Inc., 34 LA 252 (1959).

4. Since we are of the opinion that the monetary claim at hand is unjustified for the reasons stated hereinbefore, it becomes unnecessary to rule on Claim I as well as on the Carrier's procedural objection and we express no opinion on the validity thereof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March, 1964.

DISSENT OF LABOR MEMBERS TO AWARD 4494

The basis for an award is not supposed to be personal opinion; the basis for making a determination should be the governing agreement. In the opinion of the majority the claimants would not have reported for work because of a strike by other employes, but the fact remains that the strike had not done so at the time the claimants were notified not to report for work and they were entitled to notice required under Rule 22 of the governing agreement, which rule 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."

The Carrier contends that it was proper to lay off the claimants by reason of the terms of Article VI of the National Agreement of August 21, 1954, which was in effect on this Carrier; however, since the record shows that the work that would normally have been performed by the employes being laid off continued to exist and was such that it could have been performed by them, regardless of the strike, the Carrier was not authorized to abolish the positions and reduce its forces in accordance with the provisions of Article VI.

There was work existing for the claimants which could have been performed by them for a period of four days following the last day they were permitted to work. Such being the case, the Carrier should have reduced the force in accordance with aforementioned Rule 22.

E. J. McDermott
C. E. Bagwell
T. E. Losey
R. E. Stenzinger
James B. Zink