Award No. 4506
Docket No. 4296
2-IC-CM-'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. 99, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Illinois Central Railroad Company on May 9, 1961 violated the terms of the agreement when it denied its car shops employes at Centralia, Illinois, their seniority rights to perform service and failed to give them proper notice required by the agreement.

2. That the following employes at Centralia Car Department be paid eight (8) hours pay:

H. D. Draege
J. G. Bonner
D. E. Coleman
J. E. Jackson
R. A. Babb
J. Sanders
T. E. Tate
K. E. Newman
R. E. Foutch
F. R. Nollman
A. Ballantini
N. J. Prosise
H. H. Simmons
H. E. Sanders
V. L. Tate
B. D. Harris
M. E. Watts
L. L. Haney
X. C. Blackburn
L. L. Nalewajke
W. M. Mefford
K. R. Jackson
I. C. Benjamin
Otto Wanzo
C. P. Phillips
Jerry L. Piercy
D. B. Davis
C. B. Simpson
C. J. Marshall
T. T. Beasley
L. F. Piercy
L. T. Bonner
M. L. Fields
G. V. Backs
V. D. Simmons
H. E. Leek
B. D. Holsapple
R. E. Featherling
D. L. Kramer
H. D. Gherardini
W. J. Tibbs, Jr.
H. E. Sloat
B. J. Goddard
H. I. Owens
F. L. Myers
J. D. Jackson
F. J. Ragusa
J. C. Goforth
J. D. Gore
R. D. Norwood
W. J. Gaetti
L. R. Griner
B. L. Leek
R. Krikorian
H. D. Patterson
D. D. Jackson
R. A. Swartzlander
G. E. Allen
S. E. Owens
Elmer Ballantini
L. R. Niederhofer
E. J. Bright
C. M. Lambert
E. D. Kuster
J. T. Tickus
C. R. Knox
H. E. Bushong
V. Garrison
L. H. Bailey
A. D. Foutch
F. L. Beppler
C. L. Stuber

The carrier, in summary, submits and has shown that the applicable rules agreement contemplates the action taken by the carrier and provides a special basis of pay for employes affected by emergency closing of shops. Specifically, it has shown,

1. That the suspension of work involved herein was caused by an Act of God,

2. That there is no rule or combination of rules guaranteeing the employes 40 hours' work per week under any circumstances, much less in emergency conditions such as existed here, where the carrier had no alternative but to suspend work on the first shift.

3. That rule 31 expressly states that employes will be compensated only for time actually worked in such circumstances,

4. That, inasmuch as the claimants did not perform any service in the instant case, they are not entitled to any compensation.

5. That to sustain the employes' claim would be to rewrite the agreement, for it would modify both rule 31 and article VI of the August 21, 1954 agreement, and write into the agreement a guarantee rule where none now exists.

There has been no violation of the agreement and the claim should 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.

On May 9, 1961, Carrier issued instructions at 6:50 A. M. that the first shift at the Centralia, Illinois Car Shop (7:00 A. M. to 3:00 P. M.) would not work on that day.

Claimants are the 86 employes affected by such order, alleging a violation of the current Agreement, and seeking reimbursement at the pro rata rate for May 9, 1961.

Because of flood conditions just outside of Centralia, beginning on May 8, 1961, the city water supply upon which the Car Shop depended for water was unavailable to the Carrier for the operation of the equipment in the Car Shop. We find that an emergency did exist, and that no work could safely or properly be performed in the Car Shop during the first shift on May 9, 1961. Work was resumed during the second and succeeding shifts.

Claimants maintain that this was a reduction in force, and that proper notice was not given, in violation of the controlling agreement.

Carrier contends that this was not a force reduction, but a temporary suspension of work caused by an emergency situation over which it had no control; that no notice was necessary, and no notice was possible.

Claimants rely upon Article VI of the National Agreement of August 21, 1954 which reads in part 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 to not require more than sixteen hours such advance notice under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike, provided the 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 reduction no longer exists or cannot be performed."

Carrier cites Rule 31 of the controlling agreement which reads as follows:

> "Rule 31. Employes required to work when shops are closed down, due to breakdown in machinery, floods, fires and the like, will receive straight time for regular hours and overtime for overtime hours."

Carrier states that Rule 31 permits it to lay off employes without notice when no work is available for them due to emergency conditions. We fail to find this in Rule 31, except by the following unacceptable analogy: Since Rule 31 provides for compensation only for time actually worked during the emergency, then one working four hours shall be paid for four hours; one working one hour shall be paid for one hour, and one not working shall not be paid. Therefore no notice is necessary to close down the Shop because of an emergency. We do not so construe Rule 31. It is a pay rule, and nothing more.

The question remains whether or not this was a force reduction under circumstances which brought Article VI of the 1954 Agreement into play. We hold that it was a force reduction, even though for one shift only. We further find that the work which would have been performed by the Claimants could not be performed because of the emergency conditions, and that Article VI does apply here.

But Carrier asserts that even if Article VI does apply, the Claimants misconstrue the sixteen hour notice provision of the Rule. Carrier maintains that the sixteen hour notice called for is a **maximum** time and not a minimum time within which to give notice, and therefore any notice up to sixteen hours would be adequate. However, it must be borne in mind that Article VI is a modification of other existing Rules or practices, (here Rule 28), and it modifies the 4 day notice of Rule 28 to 16 hours, and does not establish a maximum time within which to give notice as contended by the Carrier.

As was stated in Award 1738 of this Division:

> "Under the situation existent on the carrier it may seem extremely harsh to require payment of this claim but we can only interpret and apply the provisions of the agreement the parties have entered into. We have no equity powers to relieve from a harsh situation, nor is it

our prerogative to rewrite the rules of an agreement by means of an award."

AWARD

Claim 1: Sustained.

Claim 2: Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1964.