

Award No. 5212

Docket No. 5041

2-NOPB-FO-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Firemen & Oilers)**

NEW ORLEANS PUBLIC BELT RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Stationary Engineer W. A. Myers, Sr. was improperly furloughed on Jan. 27, 1965 without benefit of a five (5) working days advance notice.

2. That accordingly, Stationary Engineer W. A. Myers, Sr. be compensated in the amount of five (5) eight (8) hour days at the applicable Stationary Engineer's rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Effective with January 13, 1965, Stationary Engineer W. A. Myers, Sr., hereinafter referred to as the Claimant, was furloughed as the result of a Longshoremen's strike which became effective January 11, 1965, continuing in effect to on or about Feb. 15, 1965.

Following the abolishment of the Claimant's assignment as Stationary Engineer and his resultant furlough on Jan. 13, 1965, the position of Stationary Engineer was re-established and the Claimant recalled to service on Jan. 22, 1965, continuing in service to and including Jan. 26, 1965.

On Jan. 26, 1965, Bulletin Notice was posted to the effect that the assignment of Stationary Engineer was abolished effective Jan. 27, 1965, and that the Claimant was furloughed effective the same date. Copy of said Notice is attached hereto and identified as Employees Exhibit A.

In accordance with said Notice the position of Stationary Engineer was abolished and the Claimant was furloughed, both effective January 27, 1965.

This dispute was handled on the property with all Carrier Officers authorized to handle grievances, including the highest designated Officer, all of whom have declined to adjust it.

The Agreement of October 4, 1943, as subsequently amended, is controlling.

longshoremen's strike, which caused a considerable part of Carrier's operations to be suspended.

It is Carrier's position that an assignment may be abolished at any time during an emergency such as this strike, by giving sixteen hours notice, when the work which would be performed by the incumbent no longer exists or cannot be performed.

In view of the foregoing Carrier respectfully requests your Honorable Board to decline this claim.

(Exhibits not reproduced.)

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 claim is that the Carrier improperly furloughed the Claimant on January 27, 1965, without the five working days' advance notice required by Article III, Section 2 (Reduction of Force) of the current Agreement as revised by Article III of the June 5, 1962 National Agreement.

The Carrier points out that the latter provision expressly provides that Article VI of the August 21, 1954 Agreement shall constitute an exception to the five days' notice requirement of this Article. It 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 the Carrier's operation 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 position 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."
(Emphasis ours.)

In this instance Claimant was notified by bulletin on January 4, 1965 that his assignment would be abolished on January 13 in expectation of a Longshoremen's strike, which became effective on January 11. On January 22, Claimant was recalled to service; he was again notified by bulletin on January 26 that his assignment was abolished effective January 27, at which time his work would be completed and would no longer exist, due to the Longshoremen's strike. This gave him the 16 hours advance notice required by Article VI of the August 21, 1954 Agreement.

The Employees' contention is that "any emergency conditions engendered by that strike ceased to exist as an emergency for the purpose of Article VI of the Aug. 21, 1954 Agreement, once the initial reduction in forces was accomplished in connection therewith on January 13, 1965," and that therefore the five day provision again became effective.

It should be noted, however, that Article VI of the National Agreement of August 21, 1954 provides for the shorter "advance notice before abolishing position * * * **under emergency conditions** such as flood, snow storm, hurricane, earthquake, fire or strike, provided * * * that **because of such emergency** the work * * * no longer exists or cannot be performed." (Emphasis ours.)

Article VI is not limited by its terms to initial furloughs or reductions, but by its own terms relates to any and all furloughs necessitated "under emergency conditions" or "because of such emergency." This Board has no authority to add the limitation which would be necessary to support the claim.

After his initial furlough because of the strike Claimant was recalled for several days' work before the strike again eliminated his work or made its performance impossible; but the new interruption occurred under the emergency conditions and because of the emergency, just as clearly as the initial furlough.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1967.