

Award No. 5228
Docket No. 5088
2-NOPB-BM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

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

NEW ORLEANS PUBLIC BELT RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement on January 19, 1965, Carrier abolished the assignment of G. I. Darsam, Boilermaker Welder and improperly furloughed Boilermaker Darsam on January 20, 1965, under Bulletin No. 4783, File: 400.38.

2. That accordingly the Carrier be ordered to compensate Boilermaker Welder G. I. Darsam eight (8) hours at his applicable rate of pay for each of the following dates, January 20, 21, 22, 25, and 26, 1965.

EMPLOYEES' STATEMENT OF FACTS: The New Orleans Public Belt Railroad, hereinafter referred to as the Carrier, maintains a shop at 4822 Tchoupitoulas Street, New Orleans, Louisiana, where locomotive repairs and other shop work are performed. The claimant is employed at the New Orleans Shop, first shift, 7:00 A. M. to 3:00 P. M., the assignment is to perform work covered under the Boilermaker Classification of Work Rule No. 49 of the Controlling Agreement and performing the welding of all crafts. On January 11, 1965, at New Orleans there was a strike of the Longshoremen; due to the anticipation of the strike the Carrier notified the claimant by Bulletin No. 4777 dated January 4, 1965, File: 400.38 that his assignment was abolished and he would be furloughed effective January 13, 1965, Bulletin No. 4777 attached as Exhibit A.

On January 18, 1965, Bulletin No. 4782 was posted by Master Mechanic Hecker requesting the claimant to return to work, effective 7:00 A. M., January 19, 1965. Bulletin No. 4782 attached as Exhibit B.

On January 19, 1965, Bulletin No. 4783 was posted by Master Mechanic Hecker advising the claimant his assignment was abolished and he was furloughed effective January 20, 1965. Bulletin No. 4783 attached as Exhibit C.

June 5, 1962, provides that . . . "The provisions of Article VI of the August 21, 1954 Agreement shall constitute an exception to the foregoing requirements of this Article."

Carrier had no way of knowing when the strike would end. This was not an ordinary reduction in force, but was brought about solely because of the 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.

All data contained herein has been furnished the Organization either in writing or in conference.

Oral hearing is waived.

(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 gist of this claim is that Carrier improperly furloughed Claimant, a boilermaker welder, on January 20, 1965, without the five days notice required by Article III of the June 5, 1962, National Agreement.

Article III of the 1962 Agreement requires not less than five "working days" advance notice be given before the abolishment of a position. However the last sentence of that Article expressly provides that the provisions of Article VI of the August 21, 1954, Agreement shall constitute an exception to the five day notice requirement.

Article VI of the 1954 Agreement provides that not more than sixteen hours advance notice is required before a position is abolished " * * * 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 * * * no longer exists or cannot be performed."

The record is clear that a longshoremen's strike that was in progress from January 11 to February 15, 1965, materially affected Carrier's operations

since the major part of its business involves serving public wharves. As a result of the strike, a substantial part, about fifty per cent, of Carrier's operations was suspended. The evidence is not sufficiently specific and persuasive to substantiate Petitioner's contention that work still existed that should be performed by Claimant during his furlough.

Petitioner emphasizes the additional fact that Claimant was furloughed on two occasions during the strike. His position was abolished on January 13, 1965, but he was returned to work six days later to perform necessary work. He then was furloughed on January 20. It is the latter furlough that is the subject of this claim. Petitioner has raised no objection to the furlough of January 13.

We quite agree with Award 5212 that Article VI is not limited to initial furloughs but by its own terms, expressly relates to any and all furloughs required under the named "emergency conditions" or "because of such emergency." We do not possess the authority to add the limitation which would be necessary to support the claim.

In our opinion, the two interruptions in Claimant's employment during January 1965 were due to the strike emergency.

Carrier complied with Article VI of the National Agreement of August 21, 1954, the controlling provision in the present case and the claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of July, 1967.