



Award No. 5720

Docket No. 5568

2-B&O-SM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'
DEPARTMENT, AFL—CIO (SHEET METAL WORKERS)**

THE BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier, on April 13, 1966 improperly furloughed and suspended from the service Sheet Metal Worker Donald Mankin employed at Keyser, West Virginia.
2. That the Carrier be ordered to compensate Sheet Metal Worker Donald Mankin for all time lost from April 14-15-16-17-18-21-22-23-24-25 and 28, to the date he was restored to service April 29, 1967, for said violation.

EMPLOYEES' STATEMENT OF FACTS: The Baltimore and Ohio Railroad Company, hereinafter referred to as the Carrier, elected to reduce its force of Sheet Metal Workers reason given—Coal Miner Strike. (This strike had been in effect since approximately April 7, 1966.) Sheet Metal Worker Donald Mankins, hereinafter referred to as the Claimant, was regularly employed by the Carrier in accordance with the provisions of the Controlling Agreement, at Keyser, West Virginia. On April 13, 1966, the Carrier posted a notice in the shop advising of furlough of that date.

Claimant held a work week of Thursday through Monday—rest days Tuesday and Wednesday.

Although forces were being restored April 26, 1966, claimant was not notified until April 28, 1966, via telephone, to return to service. He was later, April 29, 1966, advised to return to service by Certified Mail.

Claimant was returned to the service of the Carrier on May 5, 1966.

This dispute has been handled with the Carrier up to and including the highest officer so designated by the Carrier, with the result that he has declined to adjust it.

The Agreement effective July 1, 1921, as has been subsequently amended, is controlling.

reductions under such "emergency" conditions. To so allege or argue would do violence to Article VI and would, in effect, render Article VI a complete nullity.

4. There are authoritative awards on B&O upholding the propriety of the serving of the 16 hour notice under circumstances exactly similar to those in the instant case.
5. Carrier gave sixteen hours advance notice of furlough as provided under Article VI effective November 1, 1954, of the Addendum to the Shop Crafts Agreement. The claim is not supported by the rules of the agreement and is, therefore, without merit.

The instant case indicates an application of the provisions of Article VI effective November 1, 1954 of the addendum to the Shop Crafts' Agreement. There is no merit to this claim at either Part 1 or Part 2.

The Carrier petitions this Division to hold this claim in its entirety as being without merit and to deny it accordingly.

(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 employees 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.

Commencing about April 7, 1966, various groups of miners in the West Virginia coal area left their jobs on a wildcat strike. By April 20, there was a complete strike and all mines were shut down. This area was served by various railroads including this Carrier. Claimant, in this dispute, was employed at Carrier's engine terminal facility at Keyser, West Virginia. Because of the strike, the workload at Keyser was abruptly and dramatically decreased. Carrier found it necessary to abolish certain positions and posted a 16 hour notice which involved the Claimant. The Organization contends that the Claimant in this dispute was improperly furloughed for the reason that Carrier did not give 5 working days notice prior to making the reduction in force which affected this Claimant. The Organization cites Rule 24 of the current Agreement, which is in part:

"(a) When it becomes necessary to reduce expenses, the forces at any point or in any department or sub-division thereof shall be reduced, seniority as per Rule 28 to govern; and employees affected to take the rate of the job to which they are assigned.

"(b) When the force is reduced, five working days' notice will be given the men affected before reduction is made, and lists will be furnished the local committee." (Emphasis added)

Carrier bases its right to give 16 hour notice on Article VI of the August 21, 1954 Agreement, of which the pertinent part is 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 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 employees involved in the force reductions no longer exists or cannot be performed."

This Board finds that under the provision of Article VI above quoted, Carrier was authorized to act as it did in giving a 16 hour notice instead of the 5 day notice required in Rule 24, above quoted.

This Board further finds that the above two quoted rules have been interpreted in denial Awards Nos. 2060 (Fourth Division) and 4899 of this Division. The facts disclosed in the record in this dispute disclose that there was a strike which caused an emergency condition wherein the Carrier's operations in this instance were suspended in part. Therefore, Article VI of the August 21, 1954 Agreement is the controlling rule in this case and authorized the Carrier to take the action that it did take. The record further discloses that this Claimant was notified to return to work on April 28 by telephone and by certified mail on April 29. He did not return to work until May 5th. May 3rd and 4th were his normal rest days. This indicates that as soon as the coal mines commenced operations, this Claimant was promptly returned to service.

This Board will follow prior awards cited herein which appear to be in point with the factual situation involved in this dispute, and this claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 6th day of June, 1969.