Award No. 5817
Docket No. 5647
2-PCT(NYC)-EW- '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES' DEPARTMENT, AFL — CIO
(Electrical Workers)

PENN CENTRAL TRANSPORTATION COMPANY
(Formerly New York Central Railroad — New York District)

DISPUTE: CLAIM OF EMPLOYES:

1. That the New York Central Railroad Company violated Article VI of the August 21, 1954 Agreement when it furloughed Electrician H. Edwards on January 16, 1965.

2. That accordingly, the New York Central Railroad Company be ordered to compensate Electrician H. Edwards for all time lost between January 15, 1965 and February 15, 1965, a total of twenty (20) working days.

EMPLOYES' STATEMENT OF FACTS: Electrician H. Edwards, hereinafter referred to as the claimant, was regularly employed as such by the New York Central Railroad Company, hereinafter referred to as the carrier, at its Weekawken, New Jersey Marine Repair Shop.

Claimant's regularly assigned duties consist of repairing and maintaining all electrical equipment on tug boat fleet, repair and maintain Flexi-Van pump motors used by the car department fleet and repairing and maintaining welding generator machines in the shop.

Claimant was furloughed on a sixteen-hour notice to be effective January 16, 1965, account of Longshoremen's strike, and was recalled to service on February 16, 1965.

POSITION OF EMPLOYES: The Carrier improperly furloughed claimant in violation of Article VI of the August 21, 1954 agreement, which for ready reference reads:

> "Rules, agreements or practices, however established, that require more than sixteen hours advance notice before abolisihing 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 Carriers' operations are suspended in whole or in part and provided further that because of such emergency the

"OPINION OF BOARD: The gist of the present claim is that Carrier violated Rule 24 of the controlling Agreement, as amended by Article III of the National Agreement of June 5, 1962, when it furloughed the Claimants, effective December 26, 1962, with only two days' notice.

It is perfectly clear from an examination of the aforementioned contract provisions that five working days notice must be given before a reduction in force is effective. However, Article VI of the National Agreement of August 21, 1954, which is expressly preserved by Article III of the National Agreement of June 5, 1962, prescribes that no more than sixteen hours advance notice is required in making force reductions '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 reductions no longer exists or cannot be performed.

It is quite apparent that the furloughs in question resulted directly from a longshoreman's strike that caused at least a substantial part of Carrier's operations to be suspended. That Claimants' work did not exist during the strike also appears clear. Claimants were employed at the ore pier where operations, including thee use of machinery, were suspended during the strike since the principal function of that pier is to unload ship cargoes. Under the circumstances, it would not be reasonable to require Carrier to continue to use Claimants during a strike to perform maintenance work.

It is true that Carrier had prior warning that the longshoremen's strike would take place but this fact does not change the 'emergency' nature of the strike within the meaning of Article VI of the August 21, 1954, Agreement, particularly since that provision includes a 'strike' as one of a number of specified 'emergency conditions.

In the light of the record in this case, the claim must be denied."

The facts in this case when viewed in the light of the National Agreements, dated August 21, 1954, and June 5, 1962, and decision rendered by the Fourth Division in an identical case in Award No. 2060, should lead this Board to conclude that there was no violation of Article VI of the August 21, 1954, Agreement when Electrician H. Edwards was furloughed on January 16, 1965. Further, it would not be reasonable to require carrier to continue to use an unneeded electrician during this strike period to perform maintenance work. This 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.

The substance of the claim before us is that Carrier violated Article VI of the August 21, 1954 Agreement when it abolished claimant's position as a Junior electrician, effective 12:01 A.M., January 16, 1965. This action was taken because of a Longshoremens' strike in the New York-New Jersey area resulting, as contended by Carrier, in a curtailment of maintenance work to such an extent that only one electrician was required. Claimant's position was one of twenty-one (21) positions abolished by the notice due to the strike. Article VI of the August 21, 1954 Agreement, 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, file 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 reduction no longer exists or cannot be perrformed."

It is the contention of the employes that the Claimant's work load would increase rather than decrease, due to the fact that more tug boats were tied up and available for repair and maintenance work. There is no question raised in the record relative to the sixteen hour notice, since the notice of abolishment was dated January 14th.

There are two provisions which must be satisfied before the Carrier may abolish positions or reduce forces in the event of a strike in accordance with the provisions of the afore-quoted Article VI. They are:

(a) That Carrier's operations are suspended in whole or in part because of a strike.

(b) That the work which would be performed by the employes involved in the force reduction no longer exists or cannot be performed because of a strike.

Carrier contends that the abolishment of the position was an exercise of managerial prerogative under emerrgency conditions. To be sure, Carrier's managerial prerogatives extend far and wide, but they also are bound by the precise language of the Agreements to which they have affixed their signatures. Referring to Article VI, we are inclined to agree with Carrier that under the conditions of a strike, their operations were suspended in whole or in part. However, the second condition, that because of such emergency the work which would be performed by the employes involved in the force reduction, no longer exists, or cannot be performed, is another matter to be considered. The Organization has maintained that more tug boats, more maintenance etc. existed during the strike. It was therefore incumbent upon Management to refute categorically and with a preponderant body of evidence that either the work no longer existed or could not be performed under the circumstances. They however made no such showing in this record, merely relying on "Managerial prerogative". We think under the shifting

burden of proof doctrine that Carrier has failed to abide by the provision of Article VI. Hence we will sustain the claim to the extent of 5 days pay in accordance with the provisions of ART. III of the June 5, 1962 Agreement.

AWARD

Claim sustained in accord with opinon as expressed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1969.

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