



Award No. 5920

Docket No. 5752

2-BA&P-EW-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

PARTIES TO DISPUTE:

RAILWAY EMPLOYES' DEPARTMENT AFL-CIO

(ELECTRICAL WORKERS)

BUTTE, ANACONDA & PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Butte, Anaconda and Pacific Railway Company violated the current agreement when they failed to restore the electrical workers to the positions they occupied on July 15, 1967 when the railroad by notice dated April 18, 1968, effective 12:01 A.M. April 22, 1968, cancelled their previous notice of July 10, 1967 which furloughed the electrical workers on July 15, 1967.
2. That accordingly, the Butte, Anaconda and Pacific Railway Company be ordered to compensate Electrical Workers Jack Harrity, Bert Duff and Walter Derzay for all wages and benefits, as set forth in the current agreement, from April 22, 1968 until the named claimants are restored to service of the Carrier.

EMPLOYES' STATEMENT OF FACTS: The Butte, Anaconda and Pacific Railway Company, hereinafter referred to as the carrier, released notice on July 10, 1967 furloughing all employees. This action by the carrier was due to the copper strike in effect at that time, and this dispute does not involve the action of the carrier as to reduction of their force at that time or any action of the carrier until April 18, 1968.

The carrier posted notice dated April 18, 1968, to all concerned, that the notice dated July 10, 1967 is cancelled, effective 12:01 A.M. Monday, April 22, 1968.

On Monday, April 22, 1968, Electricians Jack Harrity, Bert Duff and Walter Derzay, hereinafter referred to as the claimants, reported to Mr. Glenn Kurtz, General Foreman, at their regular place of assignment, for work in their regular assignments or as assigned. General Foreman Kurtz notified the above named employees they were not to perform any electrical work and were not assigned any duties.

Under date of April 22, 1968, the general chairman of the electrical workers, filed claim on behalf of the named claimants, with the president and general manager of the carrier. The general chairman set forth in that letter, the position of the employees and what was claimed for the employees. In addi-

4) Finally, the claims are now invalid because of procedural defect on the part of the employees in not complying with all terms and provisions of the time limit on claims rule in effect on this property since January 1, 1955.

Carrier respectfully requests the board to grant an award supporting its position in this dispute.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Because of a copper strike, Carrier issued a formal notice on July 10, 1967 that commencing July 15, 1967 there would be a general force reduction, i.e., a "cessation of regular work." The notice provided further that "Employees will be called as needed to fill positions that may be required on an extra basis."

On April 18, 1968 Carrier issued a formal notice which stated: "Notice released by this office July 10, 1967 is cancelled, effective 12:01 A.M., Monday, April 22, 1968."

A further formal notice was issued on Monday, April 22, 1968, which stated: "In connection with notice dated April 18, 1968, personnel will be recalled in the usual manner when their services are required. Such recalls will be based on current manpower requirements of the railroad. Employees may notify department head as to their availability for either regular or extra work."

That same day Claimants reported to the General Foreman, at their regular place of assignment for work. They were advised by the General Foreman that they were not assigned any duties and that they were not to perform electrical work.

On Friday, April 19, 1968 a Carrier official informed two of the three Claimants by telephone that the April 18, 1968 notice was not a general recall and further advised Claimants that they could report their availability to the General Foreman that day or the next day.

The Organization takes the position that the notice of April 18, 1968 had the effect of voiding the effect of the July 15, 1967 notice, and that as of 12:01 A.M., April 22, 1968, the Agreement between the parties was restored in full force and effect. The Organization further contends that the electrical workers were not bound by the April 22, 1968 notice because they are covered by the terms of the March 1, 1923 Agreement, as amended.

The primary provision of that Agreement relied upon by Claimants provides in part:

"The party of the first part (Carrier) agrees to employ on its work members of the party of the second part (Organization), and the parties of the second part agree to furnish sufficient competent men for the fulfill-

ment of this agreement at any time, upon receipt of seventy-two hours notice. * * *"

Since, the Organization contends, the Agreement was in effect as of April 22, 1968, any attempt to reduce that force after that time would require Carrier to give five working days' written notice. No such notice has been issued to the electrical workers since the cancellation of the July 10, 1967 notice.

The Board cannot agree with the Organization. The cancellation notice of April 18, 1968 did not constitute a general recall, and the language of the March 1, 1923 Agreement, as amended, cannot be construed to so provide. That a general recall was not intended was evidenced by the statements made to Claimants by the Carrier official.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1970.