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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6411
Docket No. 6266
2-KCS-MA-'72

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

Parties to Dispute: (System Federation No. 3, Railway Employes' Department, A.F. of L. - C. I. O. (Machinists)
(The Kansas City Southern Railway Company and
(Louisiana & Arkansas Railway Company

Dispute: Claim of Employes:

(a) That under the provisions of the current agreement, employes of the machinist craft at Shreveport, Louisiana (G. G. Garza, I. Reese, D. B. Turner, T. N. Beach, J. M. Hines, R. M. Ebarb, D. Crawford, J. L. McDonald, L. T. Hollingsworth, L. W. Reynolds, Jr., R. J. Brown, E.E. Mathes, T. R. Redmon and W. O. Wells) and at Pittsburg, Kansas (J. O. Lavery, K. L. Kabonic, G. T. Buford, L. W. Harry, L. Menichetti, T. J. Blackman, W. O. Elliff, Jr., R. Garner, R. E. Small, W. O. McQuade, F. Maxwell, Jr., D.D. Ross, H. W. Cutler, J. W. Johnson, B. J. Ross, J. L. Natalini and D. E. Sanders) were improperly denied their right to work on their respective regular positions, on May 19, 1971.

(b) That the Carrier be ordered to pay each of the named Claimants one day's pay.

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.

Claimants were regularly employed as machinists, machinist helpers or apprentices at Shreveport, Louisiana and Pittsburgh, Kansas, two large shop facilities. A substantial part of their work appears to have been "dead work" on equipment that had been out of service and in the shop for some time. At 6 A.M. on May 17, 1971 a National strike by the Signalman's Organization began, shutting down the Carrier. Carrier posted a notice in the shops (sending copies to the General Chairmen) at 10 P.M. on May 17, 1971 abolishing Claimant's jobs effective May 18, 1971 at 12:01 A.M. At about 11 P.M. on May 18, 1971 the President signed a Joint Congressional Resolution (S.J. 100) ending the strike (and forbidding inter alia, lockouts by the Carriers).

Claimants reported for work on their regular shifts, beginning at 8 A.M. on May 19, but were not permitted to return to work by the Carrier until May 20th. The Carrier maintains that some picketing carried over to May 19th and that there were some trains which did not get under way until the second day following the signing of the Congressional Resolution. The Carrier did not deny the continued existance of shop work for the Claimants.

The history of Reduction of Force Rules goes back to 1919 with many subsequent amendments and interpretations. Currently applicable is Rule 18 (b) of the Agreement effective April 1, 1945 (as amended) which reads:

> "(b) Five working days' notice will be given employees affected before reduction is made and lists will be furnished the local committee".

Also relevant is Article II of Public Law 91-226 of April 19, 1970:

> "Article II - Force Reduction Rule
>
> Insofar as applicable to the employees covered by this agreement, Article VI of the Agreement of August 21, 1954 is hereby amended to read as follows:
>
> (a) Rules, agreements or practices, however established, that require advance notice to employees before temporarily abolishing positions or making temporary force reductions are hereby modified to eliminate any requirement for such notices under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire or labor dispute other than as covered by paragraph (b) below, provided that such conditions result in suspension of a carrier's operations in whole or in part. It is understood and agreed that such temporary force reductions will be confined solely to those work locations directly affected by any suspension of operations. It is further understood and agreed that notwithstanding the foregoing, any employee who is affected by an emergency force reduction and reports for work for his position without having been previously notified not to report, shall receive four hours' pay at the applicable rate for his position.
>
> (b) Rules, agreements or practices, however established, that require advance notice before positions are temporarily abolished or forces are temporarily reduced are hereby modified so as not to require advance notice where a suspension of a carrier's operations in whole or in part is due to a labor dispute between said carrier and any of its employees.
>
> The foregoing amendment is effective April 19, 1970."

The Organization argues that the vast majority of the work that Claimants were regularly assigned to do was available before the strike, during and after the strike. This position would be persuasive, particularly in the light of prior awards (Second Division Awards 2195, 2196 and 6112) if the provisions of Article VI of the

Agreement of August 21, 1954 were in effect. However, Article II of Public Law 91-226 quoted above specifically superseded Article VI, eliminating the basis for the claim.

The Organization further contends that Carrier failed to establish the fact that there was an emergency, under the applicable Rule. The Rule states "...emergency conditions, such as flood, snow, storm.....provided that such conditions result in suspension of a carrier's operations in whole or in part...." Surely a national strike shutting down the entire industry, much less this Carrier, falls within the definition. This is supported by our positions in Awards 2195 and 2196 cited above. The additional point is made that the emergency ended upon the signing of the Joint Resolution, requiring notice by the Carrier conforming to the requirements of Rule 18 (b). We do not concur in this argument, since the jobs had not been reestablished and no basis in the Rules exists for a second force reduction procedure.

The Organization also states that the Carrier's action in failing to return Claimants to work on May 19th was dilatory and in fact a disciplinary action in view of Claimants having observed the Signalmen's picket line. No evidence was presented in support of this contention.

We have held repeatedly that we are not empowered to change or re-write the Rules. We find that:

1. The parties have put no limitations upon the duration of a temporary force reduction in the Rule negotiated in 1970.

2. Implicit in the Rule (Article II of the April 24, 1970 National Agreement) is good faith on the part of the Carrier.

3. There is no evidence of vindictiveness on the part of the Carrier.

4. We do not believe that the reinstatement in this case was unreasonable or contrary to the Rule.

This Board must make its position clear, however, in that animus generated by a strike will not be permitted expression in the vindictive withholding of work under the open-ended language of this Rule.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November, 1972.