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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6431
Docket No. 6283
2-KCS-SM-'73

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

Parties to Dispute: (System Federation No. 3 Railway Employees'
(Department A. F. of L. - C. I. O.
((Sheet Metal Workers)
(
(The Kansas City Southern Railway Company

Dispute: Claim of Employees:

1. That the Carrier violated the Current Controlling Agreement, particularly Rule 18(B) as amended by Article III of the Agreement of June 5, 1962, when they arbitrarily withheld Sheet Metal Worker employes, Pittsburg, Kansas, from reporting for their regular work shift May 19, 1971 without affording them the proper notice of force reduction.

2. That accordingly, the Kansas City Southern Railway Company be ordered to compensate Sheet Metal Workers J. F. McCabe, E. D. Johnson, C. V. Pillon, E. L. Shelley, E. L. Davidson and D. D. Cook in the amount of eight (8) hours each at the pro rata rate of pay for May 19, 1971.

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.

At 6:00 A.M., May 17, a nationwide strike was called by the Brotherhood of Railroad Signalmen. Carrier's signalmen commenced picketing at that time, affecting all of Carrier's operations. Carrier posted a notice at 10:00 P.M. May 17, abolishing claimant's positions effective 12:01 A.M., May 18. President Nixon signed a Joint Resolution at 12:40 P.M., May 18, terminating the strike.

Employes in their Rebuttal state that the strike officially ended at 11:00 P.M. May 18. Claimants reported for work at 8:00 A.M. May 19, but were not permitted to work. The Organization argued that Rule 18 (b) of the Agreement required five working days' notice before a reduction in force may be made. Since the strike

officially ended at 11:00 P.M. on May 18, it is contended that no emergency existed on May 19, so that the "Reduction of Forces" rule was in effect. Therefore, say the claimants, they were entitled to work because they did not receive the five days notice.

The Carrier submits that because of the strike, normal operations were not possible by 8:00 A.M. on May 19. It contacted two sheetmetal workers to come in that morning but they declined. Further, says the Carrier, in order to get some work started, it canvassed all the sheetmetal workers but none would come in on the morning of May 19. The Carrier assumed that the Organization had adopted a policy that all sheetmetal workers would work their normal shifts starting at 8:00 A.M. on May 19, or none would work. On May 20, the normal work shifts began with all sheetmetal workers reporting. In addition, the Carrier contends that Article II (b) of the Agreement made April 24, 1970 amended all existing rules; agreements or practices and is the effective and controlling provision which is applicable. This provision eliminates the need for any advance notice to temporarily abolish or reduce forces where a carrier's operations are suspended in whole or in part due to a labor dispute between the carrier and any of its employees.

The claim made by the Organization is that the Carrier violated Rule 18 (b) as amended by Article III of the June 5, 1962 Agreement. Accordingly, the issue to be decided is which agreement and rule was in effect at 8:00 A.M. on May 19.

The parties agree that the strike was terminated when President Nixon signed the Joint Resolution at 12:50 P.M. on May 18. The Organization stated that the strike officially ended about eleven hours later, at 11:00 P.M. May 18. Article II (b) of the 1970 Agreement says nothing about an emergency. It refers only to a labor dispute with Carrier's employes which results in suspension of operations in whole or in part. Nothing in this subdivision states when the temporary abolishment of positions or temporary reduction of forces made necessary by the suspension of operations due to the strike may be expected to end.

It appears from the submissions of both parties that the Carrier attempted to restore normal operations by calling in some of the sheetmetal workers for 8:00 A.M. on the morning of May 19, within nine hours after the strike officially ended at 11:00 P.M. on the night of May 18. In the absence of specific time limitations, we will apply the rule of reason. Nothing in the facts before us indicates that the Carrier could have acted more quickly.

This leads us to conclude that the effect of the labor dispute was still being felt on the morning of May 19. Consequently, the Rule to be followed at that time with regard to advance notice would still be article II (b) of the 1970 Agreement.

We have noted the sworn statements of both sides and the back to work progress of the members of other Organizations. They do not overcome the plain meaning of the Rules relied upon in effect between these parties, nor do they indicate that the Carrier discriminated or acted unreasonable with respect to sheetmetal workers under the circumstances of this case.

The prior Awards submitted by the Carrier member after the panel discussion was concluded, objected to by the Labor member, were not considered by the Referee for the reasons stated by the Labor member.

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 11th day of January, 1973.