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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6483
Docket No. 6336
2-FGE-CM-'73

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

Parties to Dispute: (Railway Employees' Department
(A. F. of L. - C. I. O.
((Carmen)
(Fruit Growers Express Company

Dispute: Claim of Employees:

1. That under the controlling agreement, the Carrier improperly furloughed the forces at Alexandria, Va., on May 18, 1971.
2. That accordingly, the Carrier be ordered to compensate all employees at Alexandria Shop, except those on vacation, leave of absence or sick, for eight (8) hours at their applicable rates of pay, for May 18, 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.

The Carrier is a refrigerator car line which furnishes to the fourteen railroads that own it refrigerator cars and services related thereto. One of its car building and repair yards is located in Alexandria, Virginia and Claimants are employed at that facility. Movement of cars and materials into, out of, to and from the yard is performed for it by the Richmond, Fredericksburg and Potomac Railroad.

On the morning of May 17, 1971, a nationwide strike by members of the Signalmen's Union brought major railroad operations to a halt. The Richmond, Fredericksburg and Potomac Railroad was directly affected and did not operate. The respondent Carrier herein continued to function in its Alexandria Yard and Claimants were fully employed on May 17, 1971. Before the end of that work day notice was posted in the Yard which reads in part, "... Company operations will be suspended at all points where work no longer exists or cannot be performed. The suspension of operations will be for the duration of the strike. Subsequent to 7:30 A.M., May 18, 1971, and until further notice all positions of all crafts and classes will be discontinued ..." The Signalmen's strike was called off as a result of the signing, on the night of May 18, 1971, by President Nixon, of a

Joint Congressional Resolution ordering its cessation. The Richmond, Fredericksburg and Potomac Railroad resumed operations and Claimants were immediately recalled to work on May 19, 1971.

Petitioner charges that the Carrier did not have a valid reason to temporarily furlough claimants, there being sufficient work which they could have been doing in the Shop on May 18, 1971. This work on new cars and repair of old cars was not dependent on the Richmond, Fredericksburg and Potomac Railroad's switching services being available, the Carrier herein having its own equipment and operating employes who were not on strike to move cars in and about the Yard. Thus the Carrier was not entitled to invoke Rule 22(e)(a) of the Controlling Agreement, and its doing so was contrary to the intent and spirit thereof as set forth by Emergency Board 106 when it recommended the amendment of the rule which was in effect prior to May 1, 1970, according to Petitioner. Absent a right to utilize Rule 22(e)(a), Carrier is required to give due notice pursuant to Rule 22(a) before furloughing employes and failing to do so makes it liable to pay Claimants for May 18, 1971.

The crux of Carrier's position, which was not controverted with probative evidence, is that at the close of the day shift on May 17, the Shop was "clogged with equipment with no space for it to be moved ... and "the Shop facility could not function in its normal manner a second day without the movement of cars ..., which was impossible because (of) the Signalmen's strike."

The impact of the Signalmen's strike has been dealt with by this Division of the Board in three recent Awards (6411, 6412 and 6431). Therein it was established that "emergency conditions" within the meaning of Rule 22(e)(a) existed as a result thereof. The inability of the Richmond, Fredericksburg, and Potomac Railroad to render its services to the Yard unquestionably had the consequence of a suspension of Fruit Growers Express' Alexandria Yard operations "in part" and made it a "work location directly affected by any suspension of operations ..." (emphasis supplied). At the end of the May 17 day shift, Carrier had no way of knowing the duration of the strike and the emergency stemming therefrom. It therefore rightfully made a judgment concerning the ability of its Shop to continue to function. Neither Rule 22(e)(a) nor the caveats set forth by Emergency Board 106 relative thereto seek to compel management to operate in a wasteful and inefficient manner. It is fully recognized that a determination of these factors can only be made by those with a complete overview of the conditions and circumstances, which in this structure obviously is the Management. However, contrary to the claim of the Carrier herein that such judgement is a unilateral power, it is one that is discretionary in nature and subject to challenge and review. Well established by this Board is the concept that the exercise of discretionary authority must not be arbitrary, capricious, or unreasonable. In addition when Rule 22(a)(a) is invoked we must be satisfied that objective standards were met and the action taken was free of the unacceptable criteria outlined by Emergency Board 106 when it proposed the revisions which brought about the new Rule 22(e).

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The circumstances and conditions of May 18, 1971 at the Carrier's Alexandria, Virginia Yard were such as to permit the temporary cessation of work with notice to its employes pursuant to Rule 22(e)(a).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1973.