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(Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6560
Docket No. 6400
2-CRI&P-CM-'73

The Second Division consisted of the regular members and in addition Referee Edmund W. Schedler, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 6, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Chicago, Rock Island and Pacific Railroad Company

Dispute: Claim of Employees:

- (1) That under the applicable Agreements, the Carrier furloughed Carmen D. E. Kirk, C. F. Copeland, E. W. Hopewell, D. R. Hall, T. A. Lerch, R. L. Smith, D. R. Merritt, M. D. Forbes, R. G. Slatten, D. P. Helwig, C. D. Dunn on July 25, 1971 and July 29, 1971 at Liberal, Kansas without five working days advance notice.
- (2) That accordingly the Carrier be ordered to compensate the aforesaid claimants for five days pay each.

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 waived right of appearance at hearing thereon.

The evidence disclosed the United Transportation Union engaged in selective strikes against various railroads between July 16, 1971 and August 2, 1971. One of those railroads struck was the Southern Pacific. The Carrier in this dispute operates an interchange at Liberal, Kansas where cars were interchanged between the Carrier and Southern Pacific. The impact of the strike reduced the traffic through Liberal from an average of 457 cars per day to an average of 290 cars per day. The Carrier's evidence adduced that they were limited to interchanging cars with Southern Pacific to the extent that Southern Pacific would accept trains to be operated by officer crews.

The Organization contended that Article II, Section (a) of the April 24, 1970 Agreement did not apply because certain conditions, specifically a suspension of the operations of the Carrier in whole or in part due to an emergency, did not exist; therefore the 11 Claimants could not be furloughed without advance notice. This Board does not agree. The relevant language of Article II reads:

"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 or labor disputes 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 appears to this Board that the need for a reduction in service due to fewer cars and trains being interchanged with a struck railroad is in fact suspension of part of a Carrier's operations and satisfies the requirement of Article II.

The Organization placed emphasis on the point that the 10th Claimant (Helwig) was not recalled until August 28, 1971 and the 11th Claimant (Dunn) was not recalled until January 24, 1972. The Organization argued that these Claimants were withheld an unduly long period of time due to vengeance or for punitive reasons. There was no evidence presented to prove these allegations; therefore the claim will be denied and dismissed completely.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of July, 1973.