Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7326
SECOND DIVISION Docket No. 7187
2-RDG-CM-'77

The Second Division consisted of the regular members and in addition Referee James C. McBrearty when award was rendered.

Parties to Dispute: (System Federation No. 109, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Reading Company

Dispute: Claim of Employes:

1- That the Carrier violated the terms of the current agreement when notice dated November 26, 1974, was posted notifying all employees in the Reading Locomotive Shop, Reading Company, Reading, Pennsylvania, that only certain positions would work on November 29, 1974 and all employees not listed would not work on November 29, 1974 and did not provide for five working days advance notice as required by the rules of the current controlling agreement.

2- That the Carrier be ordered to compensate all Carmen Craft employees, listed as Claimants in Employee's Exhibit E at eight (8) hours pay, at the pro-rata rate of pay for each employee plus 1½% interest per month, from date of original claim on January 21, 1975.

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.

Our examination of the record in this case reveals that Carrier attempted to effect a temporary force reduction at its Reading, Pennsylvania Locomotive Shops to be effective for one day only - November 29, 1974.

Carrier has alleged that it possessed the right to make this temporary force reduction as a result of the provisions of Article II (a) of the National Agreement as made by and between the parties on April 24, 1970.

Article II (a) of this Agreement provides:

> "(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."

The situation involved in this instance, precipitating the temporary force reduction, was the strike of the soft coal industry which began on November 12, 1974 and continued until December 5, 1974. As a result of the impact of this strike in the coal industry, Carrier was forced to curtail expenses, and relies upon the decision as found in Award Nos. 6411, 6412 and 6514 of this Division to support their position.

From the record before us there is no evidence of probative value advanced by Carrier relative to their assertions that the work at the point where claimants were employed, was somehow affected by the work stoppage in the coal industry. Therefore, it is concluded that the Carrier has not met its burden to prove that the conditions which justify the temporary abolishment of positions with less than five days' advance notice as permitted in Article II of the April 24, 1970 Agreement did in fact exist, and the claim must, therefore, be sustained. See Second Division Award No. 6611 (Lieberman), where it was ruled:

> "*** It should be noted, however, that the burden is upon Carrier to establish that reduced operations, which may be interpreted to be a suspension of operations in part, are directly attributable to the work stoppage ('labor dispute') and not other causes."

See also Second Division Awards 6611, 5834, 5817, 4412 and 4413, as well as Third Division Award No. 21262 (Blackwell). However, there is no provision in the applicable Rules Agreement or elsewhere which warrants the allowance of interest as claimed. That portion of paragraph No. 2 of the Claim of Employes is denied.

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A W A R D

Claim sustained as per findings.

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 12th day of July, 1977.