

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: (System Federation No. 6, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employes:

1. That the Elgin, Joliet & Eastern Railway Company refuses to compensate Carmen R. Bell, W. West and F. Jandura for eight (8) hours service performed on January 26, 1976 and Carmen R. Bell and W. West for three (3) hours on January 27, 1976.
2. That the Elgin, Joliet & Eastern Railway Company be advised to compensate Carmen R. Bell and W. West for eleven (11) hours and Carman F. Jandura for eight (8) hours at the pro rata rate for service performed on January 26 and 27, 1976.

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.

Claimant Carmen, on the dates of claim, were also the Chairman, Secretary, and Vice Local Chairman, respectively, of the Local Committee of Adjustment of Local No. 882 of the Brotherhood of Railway Carmen of the United States and Canada. Claimants here seek compensation for service which they alleged they performed for Carrier on January 26 and 27, 1976.

The record reflects that on January 26, 1976, some 120 employes in Carrier's East Joliet Steel Car Shop, acting in a uniform manner, instituted and participated in an unlawful work stoppage. Such employes refused or failed to perform any work, whatsoever, even after they had received instructions from their supervisors to do so. Said employes advised that they would not return to work until assured that Carrier would immediately pay them the back wages due them as the result of the National Wage Agreement, ratified on January 12, 1976.

After all efforts, including those made by the Employees' General Chairman, failed to persuade the employes to return to work, Carrier entered the Federal District Court and sought a Temporary Restraining Order. Such Court Order was issued at 2:30 P.M., January 26, 1976. Said Order, which directed all employes to cease and desist their illegal activities, was posted on the bulletin board about 4:00 P.M. It was served on the Local representatives of the Union about 9:00 A.M., January 27, 1976. Claimants returned to and commenced working at 11:00 A.M., January 27.

Claimants and other employes were given an investigation to determine their individual responsibility for instigating, encouraging, and/or participating in the illegal work stoppage. As a result thereof Claimants and forty-one (41) employes were dismissed effective March 26, 1976.

The Board finds that Claimants were directed by the General Foreman of the Shop early in the morning of January 26, 1976, to go to work. They failed to comply with his instructions. The General Foreman also asked Claimants to set an example to the other employes by going to work. Such a request was, in the circumstances prevailing, reasonable and proper. Claimant's refusal to comply with that reasonable request was indicative as to how and why their time was being spent.

The Board is unable to find support in this record for concluding that the time spent by Claimants with the striking employes was service performed for, or on behalf of, or at the direction of Carrier.

In the circumstances this claim must fall for lack of merit and rule support. It will be denied.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of May, 1978.