Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10732
Docket No. 10496
2-C&NW-CM-'86

The Second Division consisted of the regular members and in addition Referee Lamont Stallworth when award was rendered.

Parties to Dispute; ( Brotherhood Railway Carmen of the United States and Canada
( Chicago & North Western Transportation Company

Dispute: Claim of Employes:

1. That the Chicago and North Western Transportation Company violated the provisions of the current agreement, specifically Rule 25, when it improperly furloughed thirty (30) Carmen Claimants, Proviso, Illinois and when it failed to post a notice providing for a five (5) day advance notice.

2. That accordingly, the Chicago and North Western Transportation Company be ordered to compensate the below listed Claimants for five (5) days at eight (8) hours for each day claimed at stright (sic) time rate.

Carmen Claimants;

J. M. Romano, R. Cocic, A. Kamovich, S. Perez, M. Blumka, M. Martinez, M. Popovic, R. Evans, M. Knoblock, R. Nowak, D. Madland, M. Smith, I. Gunjevic, W. Turner, J. W. Taylor, R. Hildebrant, T. Olsen, M. Fleming, G. Lofton, M. Maldonado, B. Henderson, K. Yu, D. Katich, D. Dorsey, T. J. Smith, M. Johnson, D. Penrice, T. Piecuch, R. Engler and L. Eckford.

Dollar Amount Due Each Claimant:

5 days x 8 hr/day x $12.28/hr = $491.20

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 employes 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.

This dispute arises out of the strike by the Brotherhood of Locomotive Engineers, which lasted from September 19 through September 23, 1982. During the course of the strike the Chicago and North Western Transportation Company issued a bulletin dated September 21, 1982 which abolished all positions on the second and third shift at the "Spot Rip" at Proviso, Illinois. The Carrier contends that it abolished these jobs without any advance notice, under the Emergency Force Reduction Rule, which permits lay-offs without notice "where a suspension of a carrier's operations in whole or in part is due to a labor dispute between said carrier and any of its employees." (Article II(b), amending Article VI of the 1954 Agreement).

The Organization argues, however, that the Carrier improperly invoked the Emergency Force Reduction Rule and instead should have complied with Rule 25, which requires five days' notice before a lay-off. The Organization contends that the Carrier has not met its contractual burden to show that the emergency conditions necessitated a lay-off of this length. The Organization also charges that the Carrier failed to take all steps necessary to "restore service and the status quo of the parties" to that which existed prior to the Engineers' strike, as mandated by a Federal Congressional Resolution calling for an end to the strike.

This Board is not authorized to interpret or enforce the laws of Congress, other than the Railway Labor Act. (See Third Division Award No. 20368). Furthermore, even if the Board did have jurisdiction to enforce this law, it is not clear that the Carmen are one of the "parties" contemplated in the Resolution, or that they would have standing to bring a charge under this law.

Having carefully read and considered the Employees' Submission and supporting documents, the Board concludes that the Organization is not really contesting the original lay-off of the Claimants without a five-day notice. That furlough first occurred during the pendency of the strike, and the Organization does not seriously dispute that the strike caused a suspension of at least part of the Carrier's business. In such a situation the Emergency Force Reduction Rule allows the Carrier to furlough employes without notice.

In essence the Organization argues that the Carrier had no right to <u>extend</u> the lay-offs beyond the ending date of the strike, without giving five days' notice. The Organization has not pointed to any language in the Emergency Force Reduction Rule, or anywhere else in the contract, which specifically requires the Carrier, at the moment a strike ends, to recall all employes furloughed during the strike. The stroke of the pen ending the strike does not end the state of emergency created by the strike; normally it takes some time to restore service to its full pre-strike strength. (Second Division Award No. 6412).

Nevertheless, although the parties have placed no explicit limits in the rule upon the duration of a temporary force reduction, certain limits apply. The rule does refer to the "temporary" abolishment of positions due to a strike; if the Carrier had <u>permanently</u> abolished these positions following the strike then the five-day notice requirement would apply. (See, e.g., This Board's Awards in 10730 and 10731.) The question is, at what point does a temporary abolishment become permanent?

Furthermore, this Board has held that implicit in the Emergency Force Reduction Rule is a good faith requirement on the part of the Carrier; the Carrier may not employ the rule vindictively. (Second Division Award No. 6412.) The Organization here claims that the Carrier did use the rule vindictively by refusing to recall the Carmen as quickly as sufficient business was restored after the strike. As evidence to support its assertion, the Organization relies primarily upon evidence that some of the Carmen's repair work was transferred to another yard during the period immediately after the end of the strike. The Carrier states that this shifting around of work was common practice before the strike, however, and that all the locations cited in the claim are within a single seniority district. The Organization has not specifically responded to this assertion.

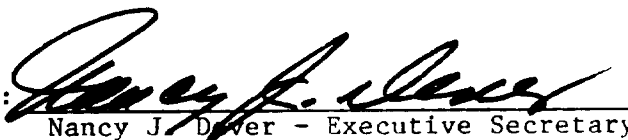
Fourteen of the thirty-one Carmen at issue here were returned to their jobs within five days of the end of the strike. This does not seem an unusually long period of time to recall forces after a strike. The remaining sixteen Carmen were not recalled until nearly three weeks after the strike had ended. This appears to be an unusually long period of time, but the Organization has not carried its burden or proving that there was sufficient work to bring them back sooner. In particular, the Organization has not responded to the Carrier's assertions that the shifting of work among certain locations at the Proviso location was common historical practice prior to the strike.

Under these circumstances the Organization has not met its burden of proving that the Carrier violated the "good faith" requirement in its use of the Emergency Force Reduction Rule, or that it acted vindictively. Consequently, the Organization has not met its burden of proving its claims that the contract was violated.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1986.