Award No. 3715
Docket No. MW-3680

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ALABAMA, TENNESSEE AND NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that all employes who were temporarily laid off on May 24 and 25, 1946, on account of strike by other classes of employes, shall each be paid eight (8) hours on each of those two days at their respective regular rate of pay.

EMPLOYES' STATEMENT OF FACTS: Under date of May 22, 1946, the following memorandum was issued to all Section, Extra, and Bridge Gang Foreman, Machine Operators and Roadway Mechanics, on the Alabama, Tennessee and Northern Railroad:

> "To all Section, Extra Gang, Bridge Gang, Foremen, Machine Operators and Railroad Mechanics:
>
> If the proposed strike of Brakemen and Engineers comes off Thursday, May 23, you and your entire force lay off Friday, May 24, until further notice. If the strike does not come off, there will be no interruption of service."

As a result of this order, all employes in the Maintenance of Way Department were required to suspend work on May 24 and 25, 1946.

Agreement between the Alabama, Tennessee & Northern Railroad Company and the Brotherhood of Maintenance of Way Employes, effective February 1, 1945, is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 6 (c) of the current agreement provides as follows:

"RULE 6

BASIC DAY AND MEAL PERIOD

(c) Regularly established daily working hours will not be reduced below eight (8) hours per day, six (6) days per week, except that this number of days may be reduced in a week in which holidays occur by the number of such holidays."

Rule 10 of the current agreement provides as follows:

"RULE 10

DETERMINING HOURLY RATE FOR MONTHLY RATED EMPLOYES

To compute the hourly rate for monthly rated employes, multiply the straight time monthly rate on the eight (8) hour basis by twelve

the strike. It also would have placed adidtional burdens on the Maintenance of Way employes which we felt to be unwarranted. Had we completely abolished these positions, without reservation, it would have been necessary, under Rule 21 of the above mentioned agreement, to have re-established them by bulletining them as a new position under Rule 19 of said agreement. This would have meant that the employes would have had to file written applications for the the positions to which they were restored.

We respectfully submit that the employes here involved were denied work on May 24 and 25, 1946, by reason of the strike of the B of LE and the B of RT, and not by reason of any action on our part, and that the Company should not be penalized by being required to pay these employes wages for the two days on which they did not work.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim covers all employes of the Carrier within the scope of its agreement with the Brotherhood of Maintenance of Way Employes. It is for eight hours of pay at their regular rates for the days of May 24th and 25th, 1946.

The claim arises because of the strike of Trainmen and Engineers on May 23, 1946 but pursuant to a telegram issued by the Carrier, under date of May 22, 1946, to all its Section, Extra and Bridge Gang Foremen, Machine Operators and Mechanics.

The telegram is as follows:

> "If the proposed strike of Brakemen and Engineers comes off Thursday, May 23, you and your entire force lay off Friday, May 24, until further notice. If the strike does not come off, there will be no interruption of service."

The strike ended on May 25, 1946 and the employes were off, because thereof, on May 24th and 25th, 1946.

By this telegram the Carrier did not abolish the positions but only suspended them during the period of the strike. During this period all claimants were regularly assigned employes.

Rule 6-(c) of the parties' effective agreement provides:

> "Regularly established daily working hours will not be reduced below eight (8) hours per day, six (6) days per week, except that this number of days may be reduced in a week in which holidays occur by the number of such holidays."

The record does not bring the Carrier's action within the exception and consequently what was done was in violation thereof.

Carrier refers to Rule 30 but the facts here do not bring this case within the provisions thereof because the conditions here existing did not prevent the work of these employes from being performed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier has violated the rules of the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of November, 1947.