Award No. 4001

Docket No. CL-38[illegible]

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that the Carrier violated the Clerks' Agreement:

1. When it failed and refused to permit Robert Cale and other employes listed in Statement of names furnished to the Carrier to perform work and be paid on the days stipulated.

2. That said employes shall be reimbursed for wage loss suffered on said dates.

JOINT STATEMENT OF FACTS: Due to strike of employes represented by the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Engineers the following notices were posted on bulletin boards in the Freight Houses on May 24, 1946:
At Minneapolis, Minnesota:

"To all Employes.

Following from R. F. Adams, Agent.

'Effective with the business of May 25, 1946 platform forces will be suspended until further notice and the only forces required is the necessary help for the delivery of freight at the inbound warehouse.'

Wm. R. Minogue, Ass't. Agent."

At St. Paul, Minnesota:

"TO ALL CONCERNED:

"All positions in the St. Paul Local Freight Office will be abolished effective with the close of today's business, with the following exceptions:

Cashier's Department

1 CB&Q Cashier
1 Great Northern Cashier
1 Abstract Clerk

factors so utterly dissimilar to those existing in the case now before you as to make that Board Award of no value at all as a precedent.

The Carrier, therefore, holds that no precedent favorable to the position of the employes has been established by previous awards of your Board, but that, to the contrary, such awards as may in any way be considered relevant fully support the position of the Carrier; that the force reduction which is the cause of the dispute in this case was a perfectly proper and legitimate one under the provisions of Rule 18, since its purpose was not, in any way, to evade the application of the weekly guaranty rule; it was "caused by some force beyond the control of the Carrier"; and the Carrier had no means of knowing how long such cause would continue.

Therefore, it is the position of this Carrier that the force reductions made in this case were in full compliance with all rules of the agreement between it and the Brotherhood of Railway and Steamship Clerks; that none of such rules was in any way violated, and that, therefore, the claim is without merit and must be denied.

It is hereby affirmed that all data herein submitted in support of Carrier's Position have been submitted in substance to the Employe Representatives and made a part of the claim.

Opportunity for oral hearing is hereby requested.

OPINION OF BOARD: At 4:00 P.M. on May 23, 1946, locomotive engineers and trainmen went on a nation-wide strike which suspended practically all railroad operations. The strike terminated on May 25, 1946 at 2:57 P.M., C.S.T. By notices properly given, employes here involved were notified substantially as follows: At Minneapolis, Minnesota, platform forces suspended until further notice as of May 25, 1946; at St. Paul, Minnesota, positions in local freight office abolished at close of business on May 24, 1946; at Sioux City, Iowa, positions abolished as of May 27, 1946; and at St. Cloud, Minnesota, employes were laid off on both May 24 and 25, 1946. Employes at all other points on Carrier's railroad were not laid off or were returned to work before reduction of force became effective. The Organization contends that employes at the four places named are entitled to pay lost during the days they were off duty.

The Carrier contends that the positions were abolished in the manner provided by Rule 18 (a) of the current Agreement and opportunity offered those cut off to exercise their seniority on other positions. We find this assertion to be true except as to the employes at Minneapolis who appear to have been suspended from work without the abolishment of their positions. This, of course, cannot be done under the guarantee rule and the claim of the employes at Minneapolis is well taken. Awards 3661, 3680, 3715 and 3838.

As to employes working at St. Paul and St. Cloud, no basis for claim exists. The positions were abolished in the manner prescribed by Rule 18 (a). The strike tying up railroad operations was not the fault of the Carrier. Consequently, the Carrier had the right to reduce forces by abolishing positions on which no work remained or had been materially reduced. At the time the positions were abolished, a strike terminating railroad operations was in effect. It was the cause of the abolishment of the positions. It cannot logically be said under the circumstances shown that the positions were abolished to avoid compliance with contract rules. It is true that some of the employes were not called back to work until May 26 and 27, 1946. Naturally if the lag in freight service resulting from the strike carried over to these dates at some points, the Carrier was under no obligation to reestablish the positions until the work was there.

It is urged that it was generally known that the strike would be of short duration and that the Carrier, for that reason, could not properly abolish the positions. This argument is very speculative. The duration of the strike could not be predetermined. So far as the record shows, the Carrier could properly assume that it might exist for an indefinite period. During this period, the Carrier had the right to reduce forces. Awards 3680, 3682. The

fact that the strike ended sooner than anticipated, does not have the effect of making violative of the contract that which would not otherwise have been.

The record shows that at Sioux City the notice abolishing the positions effective May 27, 1946, was posted on Saturday, May 25, 1946. The strike terminated during the afternoon of May 25, 1946, thus removing the cause which justified the abolishment of the positions. The Carrier had ample time to cancel the notice before it became effective and we think it was obligated to do so. If the notice was posted after the termination of the strike on May 25, 1946, a fact not shown by the record, the abolishment of the positions was wholly improper.

We conclude, therefore, that the claim of the employes in the Minneapolis and Sioux City freight houses should be sustained and those working in the St. Paul and St. Cloud freight houses should be denied.

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

The Agreement was violated to the extent shown in the Opinion.

AWARD

Claim sustained as to employes working in freight houses at Minneapolis, Minnesota, and Sioux City, Iowa. Claims of employes at St. Paul and St. Cloud, Minnesota, denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of July, 1948.