Award No. 5042
Docket No. MW-4932

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the provisions of the effective agreement when it caused to be laid off its Maintenance of Way forces on May 11, 1948 on account of a threatened strike by other classes of railroad employes;

(2) That all employes affected be reimbursed at their regular rates of pay, pro rata, for all time lost beginning with May 11, 1948 and subsequent thereto on account of this violation of the agreement.

EMPLOYES' STATEMENT OF FACTS: Effective May 11, 1948, the Carrier barred from service many of its Maintenance of Way Employes on account of a threatened strike of other classes of railroad employes. The theatened strike did not materialize. The Maintenance of Way Employes who were barred from service because of the threatened strike suffered a loss of time and earnings ranging from three (3) hours to four (4) days.

The employes involved were not paid for the time lost.

The agreement, effective September 1, 1947, between the two parties to this dispute, is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES': Rule 7-2 of the effective agreement reads as follows:

"7-2. HOURS PAID FOR.—The hours of service of all employes covered by this agreement shall not be reduced below the actual number of hours constituting the regular week day assignment for six days per week, to avoid making force reductions.

"When less than eight (8) hours are worked for convenience of employes, or when regularly assigned for service of less than eight (8) hours on Sundays and holidays, or when, due to inclement weather, interruptions occur to regularly established work period preventing eight (8) hours' work, only actual hours worked or held on duty, with a minimum of three (3) hours, will be paid for, except as provided in Rule 7-16 hereof."

5. Conclusion.

The facts pointed out above show that the claim is not supported by the rules and is not valid for any reason, and Carrier respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On April 29, 1948, the Organizations representing the engineers, firemen and switchmen served notice of their intention to strike in a dispute over wages on all railroads at 6:00 A.M., May 11, 1948. As a result the Carrier notified other employes not participating in the strike, including maintenance of way employes, that their positions were abolished as of the close of work on May 10, 1948. At 10:30 P.M. on May 10, 1948, Carrier was advised that the strike notice was cancelled and notices were immediately issued reopening the abolished positions and calling the former occupants thereof back to work as of May 11, 1948. Some employes were not reached in time to prevent loss of time. The claim here made is for work lost by employes who did not return to work at the commencement of their assignments on May 11, 1948 because of the notices served and their failure to receive promptly a subsequent notice to report for duty.

The record is clear that Carrier was faced with a complete termination of train operations at 6:00 A.M. on May 11, 1948, because of a threatened strike. Under such circumstances Carrier could properly abolish all positions remaining to protect itself from loss. The abolishment of positions under such circumstances and for such purpose is a bona fide abolishment within the meaning of previous awards making use of that expression. The form of the notice given and the situation facing the Carrier at the time the notice was given, was sufficient to sustain the Carrier's action in abolishing the positions here involved.

The Organization contends that the act of the Carrier in abolishing the positions of claimants was in violation of the guarantee rule. This rule guarantees six days work of eight hours each per week during the existence of the employment relationship. It has no application to an employe whose work has been terminated by the abolishment of his assigned position.

It is urged also that the fact that the positions in question were not rebulletined is evidence that the Carrier did not intend to actually abolish the positions. Standing alone, such an intent could be inferred. But in the case before us it was agreed by the Carrier and the General Chairman that the employes should retain their regular positions when such positions were reestablished and the employes called back to work. This removed the necessity for rebulletining the positions and any unfavorable inference that might be drawn from the Carrier's failure to do so.

The record shows that Carrier made every reasonable effort to call claimants back to work without loss of time after the strike notice was withdrawn. This is all that Carrier is obligated to do. Circumstances not under control of the Carrier brought about some loss of time by some employes. Other employes failed to keep themselves advised of the status of the strike and their loss of time is chargeable to a failure to take reasonable precautions for their own interests. The Carrier is not responsible for either of these eventualities. It is responsible only for its own violations of the controlling agreement.

The Organization contends that Carrier improperly abolished the positions here involved in that such action was in direct conflict with Rule 6-7, current Agreement, providing:

> "PENDING DECISION. — Prior to the assertion of grievances as herein provided, and while questions of grievances are pending, there will neither be a shut down by the employer nor a suspension of work by the employes."

It is true that when the notice abolishing the positions of these claimants came to the attention of the General Chairman, he immediately protested the action as a violation of the Agreement. The Organization contends that this is a grievance to which Rule 6-7 must be given effect. We think not.

It will be observed that Rule 6-7 is a part of Rule 6 dealing with the general subject of discipline and grievances. A reading of the whole of Rule 6 indicates that it deals with individual employes disciplined or who feel they have been unjustly treated. To put the interpretation upon Rule 6-7 for which the Organization contends would make it possible for either of the parties to maintain the status quo by a mere protest of the action taken by one party by the other. No such far-reaching effect was intended. Rule 6-7 simply means that individual discipline and grievance matters will be handled to a conclusion on the property before the Carrier will order a shut down or before the Organization will order a strike or other suspension of work by the employes. The protest by the General Chairman against the abolishment of claimants' positions is unaffected by Rule 6-7. It has no application to such a position.

We find no basis for an affirmative award.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of September, 1950.