Award No. 5389

Docket No. CL-5339

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Alex Elson, Referee.

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (Eastern Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Truckers Rex A. Robertson, Leonard T. Davis, Earl C. Russell and Norman G. Ray shall be paid for time lost on May 25, 1946, as a result of Carrier's action in suspending them from work on May 24 and 25, 1946.

EMPLOYES' STATEMENT OF FACTS: Rex A. Robertson, Leonard T. Davis, Earl C. Russell and Norman G. Ray, occupants of regularly assigned Trucker positions, Class 3, Tulsa, Oklahoma, reported for duty at their regular starting time on the morning of May 24, 1946, but found that they were locked out by the Carrier and a notice posted on the door of the warehouse to the effect that their jobs were abolished effective May 24, 1946, until further advised. These employes were permitted to resume work on the following Monday, May 27, 1946, but compensation for May 24 and 25 was deducted from their pay. During the course of handling this claim with Mr. Gray, General Manager, he freely admitted that, under the notice given, Section 13-a of Article III was violated and advised he was authorizing payment to claimants for time lost on May 24, 1946.

POSITION OF EMPLOYES: This dispute arose as a result of Carrier's failure and refusal to compensate four Truckers at Tulsa, Oklahoma, two full day's pay on and after notice was posted on the warehouse door advising them their jobs were being abolished. Employes contend that the following rules of the current agreement are in violation:

ARTICLE III

> "Section 13-a. When reducing forces, seniority rights shall govern; that is, employes affected by reductions in force or abolishment of positions may exercise their seniority over junior employes; the latter to have the same right. Seniority must be exercised hereunder by each individual within five (5) consecutive days from date he is actually displaced; otherwise he shall be considered unplaced and subject to the provisions of Section 13-b of this Article. Regular forces may be reduced and bulletined positions may be abolished on notice to be given the affected employes

'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 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 situation."

* * * * * *

In conclusion, the Carrier asserts that the instant claim, which contemplates that the claimant employes shall also be allowed eight (8) hours' pay for service not performed on May 25, 1946, is, for reasons stated hereinabove, clearly without merit or schedule support and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves construction of the notice provisions of Article III, Section 13 (a) of the Agreement of the parties. The facts are not in dispute.

At about 7:30 A. M., May 24, 1946, the following notice was posted by the Carrier on the freight house door at Tulsa, Oklahoma:

"All Truckers:

Until further advised your position as Trucker is abolished effective 8:00 A. M. May 24th, 1946, until further advised. Those wishing to exercise their seniority rights will advise. All Truckers will keep in touch with me by leaving their address with Mr. R. S. Black, Freight Clerk.

(s) R. E. Dearth
R. E. Dearth, Agent"

On August 21, 1946, claimants made a claim for 2 days' pay each, for Friday, May 24, and Saturday, May 25, 1946, the days on which the claimants did not work because of the notice above quoted. The claim was made with the superintendent. The superintendent declined the claim. After appeal to the General Manager by letter on December 21, 1946, the Carrier agreed to pay all claims for May 24, but declined the claims for May 25.

In his letter to the Vice General Chairman of the Organization, the General Manager said in part:

"It is admitted that these employes were not given the notice required under Article III, Section 13-(a) that their positions were being abolished on May 24th and we are authorizing our local people to pay for the time lost on this date.

It is our contention that there is no basis for the claim covering time lost on May 25th in view of the fact that sufficient notice was given in this instance. Therefore, that portion of the claim is respectfully declined."

The four positions in question were reestablished effective Monday, May 27, 1946. The controlling rule is Article III, Section 13 (a), the pertinent part of which reads:

"Regular forces may be reduced and bulletined positions may be abolished on notice to be given the affected employes not later than the time they commence work on the day prior to the effective date of such reduction or abolishment."

A number of contentions have been made by the claimants during the handling of this claim on the property and before the Board. The claimants at this time seem to rest their case principally on the following contention. The notice was posted at 7:30 A. M. on May 24. The employes were paid for May 24. They claim that the forced reduction actually took effect at the close of the tour of duty for the employes at 5:00 P. M., May 24, or at least on that payroll date. They contend that since Article III, Section 13 (a) provides the notice to be "on a day prior" to the abolishment, the notice should have been given on May 23. They pose the question as follows:

"When a position is abolished, does it cease to exist immediately following the close of the last tour of duty to be worked on the position, or does the position, by some unexplained feat of magic, continue on until the starting time of the position, on the following day, before it passes into a state of non-existence, as contended by the Carrier?"

As we read the provisions of Article III, Section 13 (a), the "effective date of the reduction or abolishment" would be the next work day. In our opinion, in this case this would be Saturday, May 25, commencing at 8:00 A. M. the next working day. Since notice in fact was given at 7:30 A. M. on May 24, notice was given on the day prior to the effective date. We believe that the Carrier effectively disposed of this contention in its final brief when it said "the effective date of an abolishment of a position on which an employe works today cannot possibly be today; it can only be tomorrow, the first day that the position is no longer in existence. The Employes cannot with propriety argue that the effective date of the abolishment of a position is the last day on which it is scheduled or assigned to work. The effective date can only be the day following that on which the position was last in existence."

The incidents involved in this case date back to May of 1946. The record shows that the Employes waited more than 18 months after the Carrier's decision to advance its claims. While we are not disposed under the circumstances of this case to invoke the doctrine of laches, we believe that the delay is significant. To us it shows a lack of real confidence in the claim and supports our conclusion that the claim is without merit.

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 Carrier did not violate the Agreement by failing to pay the employes for May 25, 1946.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of July, 1951.