Award No. 7241
Docket No. SG-7111

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Pennsylvania Railroad:

(a) That the Carrier violated Article 4, Section 6, of the current agreement when it failed to give 48 hours advance notice to the employes of the T. & S. Department that their positions would be abolished on May 11, 1950.

(b) That all employes in the T. & S. Department on the Cincinnati Division who were furloughed as a result of the above force reduction be compensated for all time lost at the regular rate of pay of the positions they held prior to the above force reduction.

(c) That all T. & S. employes who were required to exercise their seniority on lower-rated positions be compensated for the difference in rates of pay.

(d) That all T. & S. employes who were required to travel to cover positions other than the ones they held prior to the above force reduction be compensated for all such travel time.

(e) That all T. & S. employes who were obliged to incur expenses as a result of the above force reduction be compensated for all said expenses.

EMPLOYES' STATEMENT OF FACTS: On May 9, 1950, at 5:30 P. M. notice was sent out by the Division Engineer at Cincinnati, Ohio, addressed to all T. & S. Department employes on the Cincinnati Division reading as follows:

"THE PENNSYLVANIA RAILROAD
WESTERN REGION
CINCINNATI DIVISION

TO EMPLOYES COVERED BY AGREEMENT WITH TELEGRAPH AND SIGNAL EMPLOYES REPRESENTED BY BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA:

NOTICE

A strike having been ordered by the Brotherhood of Locomotive Firemen and Enginemen and applicable to all territory of the

in fact fulfill the 48 hours' time requirement of Article 4, Section 6 when it notified its employes by published notice on May 9, 1950 and verbal notice May 9 and 10, 1950, that their positions would be abolished following their tour of duty on May 11, 1950, which notification for the purposes of Article 4, Section 6 meant that the positions would not be worked and were abolished beginning with the tour of duty on May 12, 1950.

III. **Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.**

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreements between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has established that the parties to the applicable Agreement did not contemplate nor intend the notice provision found in Article 4, Section 6 to apply to a situation such as is involved in the present dispute; further, it has been established that if it is assumed the time provisions of 48 hours' notice must be complied with in the present case such time provisions have in fact been complied with by the Carrier; and that it is the position of this Carrier that the job abolishments made in this case were in full compliance with all rules of the Agreement between it and the Brotherhood of Railroad Signalmen of America, and that, therefore, the claim is without merit and must be denied.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimant, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same. Oral hearing is desired.

All data contained herein have been presented to the employes involved or to their duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: On May 9, 1950, the Carrier having been notified that a strike by the Brotherhood of Locomotive Firemen and Enginemen was to commence at 6:00 A. M. on May 10, 1950, sent out a notice at 5:30 P. M. to the effect that certain specified employes, named in the notice, would have their positions abolished, "effective at the close of the tour of duty May 11, 1950." The employes involved normally worked from 8:00 A. M. to 4:45 P. M. The Brotherhood filed the claim which is now before

us, contending that the Carrier violated Article 4, Section 6, of the current Agreement, which is as follows:

> "When a position is abolished, the employe filling that position shall be given at least 48 hours' advance notice. No advance notice need be given to an employe who is displaced by an employe whose position is abolished, nor to an employe employed for temporary or emergency service in a position or vacancy which, under Article 4, Section 20 of this Agreement, it is not necessary to advertise."

Technically, notice of abolition of the positions in question was less than 47 hours prior to "the close of the tour of duty May 11, 1950." However, Claimants performed service on their regular assignments May 10, and May 11, 1950, and it may reasonably be argued that the parties intended this notice to cover only two working days. The 48 hours' notice issued at 5:30 P. M. on May 9, expired at 5:30 P. M., May 11. None of the employes here involved was working at that time. And none was due to return to his assigned duties before 8:00 A. M., May 12. Therefore, it cannot be truthfully said that these employes lost time because the language of the notice stated that the termination of the jobs was to be at "the close of the tour of duty May 11, 1950", instead of at 5:30 P. M., May 11, 1950. Had the notice simply stated that the positions of the named employes were to be abolished 48 hours after the date of the notice, this claim would probably not have reached us. The same might have been true if the language had specified that the positions were to be abolished, effective at 5:30 P. M., May 11, 1950. Award 5389.

Claimants have pointed out that oral notice was received by them some hours after the official, posted notice. Some were notified directly at 7:00 P. M., May 9; others were given such personal notice at 8:00 A. M., May 10, and a few received such notice as late as 10:00 A. M., May 10. The Agreement does not specify that personal or oral notice is essential. And it is not for us to add such a stipulation.

These jobs were not abolished under a foreseeable force reduction, but in the face of a strike. While opinions of this Board differ with respect to rigid compliance with the letter of Agreements where strikes are involved, many of our awards have held that strikes by other than the complaining crafts, (which results in drastic reduction in their work), constitutes emergency situations and gives the carriers involved reasons for abolishing positions so affected. Awards 6000, 5042 and 5540. The abolishment of positions not needed because of the strike is clearly the prerogative of management. And it is the function of management to protect itself from loss in situations of this kind. Obviously, the language of Article 4, Section 6, pertains to abolishing "a position" under somewhat more normal circumstances. It is doubtful whether the parties were contemplating its use in situations of this kind. Section 8, which comes into use "when forces are reduced, or positions are abolished . . ." would appear to be more applicable than Section 6 to the situation which the parties confronted in May 1950.

Even if we concede that Section 6 was applicable in this situation, there was no violation of the rule which resulted in a loss to the Claimants. They are, therefore, not entitled to the claims set forth.

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: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 7th day of March, 1956.