



Award Number 17570

Docket Number CL-18000

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6512) that:

1. The Carrier violated the Rules of the Agreement extant between the parties when it called Messrs. D. E. Whittaker, J. Kemp, D. Camp, and L. A. Ballard to return to service on the Midnight shift at Stockton Yard on July 17, 1967 and refused to compensate them as claimed.
2. Messrs. J. Kemp and D. E. Whittaker shall now be allowed a day's pay at the rate of pay of the position they were called to work on July 17, 1967.
3. Messrs. L. A. Ballard and D. Camp shall now be compensated for a minimum call at the rate of the position for which called on July 17, 1967.

EMPLOYEES' STATEMENT OF FACTS: On July 17, 1967 The Western Pacific Railroad Company and other major carriers were tied up by a Nation-wide strike called by the Shop Craft Organizations. Shortly before Midnight July 17, 1967 the claimants were all contacted by Agent H. K. Reese and requested to report for the Midnight Shift on the basis that the picket line would be removed and the Carrier would resume service at that time.

The four employees endeavored to report for service as requested by Agent Reese but upon arriving at a point near the Yard Office they found the strike had not been ended and that a picket line still existed. Shortly thereafter Agent Reese met the employees at the picket line and instructed them to go home as the picket line was not going to be lifted after all and that conversation is confirmed through Employeess' Exhibits "A-1", "A-2", "A-3", and "A-4", attached hereto.

Claims were thereafter filed by each of the four claimants and declined by the Timekeeper through his several letters dated August 22, 1967. Claims were thereafter handled in the usual manner up to the Manager of Personnel, the highest officer of the Carrier authorized to handle claims, through the following exchange of correspondence: Local Chairman Earl P. Miller's let-

To determine the pro rata hourly rate for daily rated employees, divide the daily rate by 8. To determine the daily rate for hourly rated employees, multiply the hourly rate by 8.

(c)—Monthly Rated Employees—(See National Agreements of August 21, 1954, Article II, Section 2(a), and November 20, 1964, Article II, Section 6(e))

Monthly rates, the hourly rates of which were predicated upon 169-1/3 hours under the Forty Hour Week Agreement shall be adjusted by adding the equivalent of 64 pro rata hours to the annual compensation (the monthly rate multiplied by 12) and this sum shall be divided by 12 in order to establish a new monthly rate. The hourly factor will thereafter be 174-2/3 and overtime rates will be computed accordingly.

(d)—Weekly Guarantee—

Nothing herein shall be construed to permit the reduction of days for the employees covered by this agreement below five (5) per week, except that this number may be reduced in a week in which holidays occur by the number of such holidays, as specified in the Agreement. Such reductions may be made only when a specified holiday is observed on an assigned work day of an individual employee."

"NOTIFIED OR CALLED

Rule 21. Employees notified or called to perform work not continuous with, before, or after the regular work period (except as otherwise provided in Rules 20(g) and 22(b)) shall be allowed a minimum of 4 hours' pay for 2 hours and 40 minutes' work or less and if held on duty in excess of 2 hours and 40 minutes, time and one-half shall be allowed on the minute basis.

Employees who, prior to the completion of the regular tour of duty, are notified to return for further service may be compensated as if on continuous duty.

Employees who have completed their regular tour of duty and have been released, called to return for further service shall be paid in accordance with the first paragraph of this rule."

(Exhibits Not Reproduced)

OPINION OF BOARD: With a few minor variations, the facts are not in dispute. Starting at 6:00 A.M. on July 16, 1967, the Shop Craft Organizations initiated a strike against all major Carriers. Thereafter, Public Law 90-54 was passed by Congress and signed by the President at 9:30 P.M., on July 17, 1967, terminating the strike. Needless to say, during the period prior to the enactment of PL 90-54, a legal picket line was established and respected by other Organizations.

Thereafter, when the Carrier was informed that picket lines were being disbanded, the Agent telephoned Claimants to report for work at midnight. Claimants Ballard and Camp were regularly assigned employees, with hours from 12:00 midnight to 8:00 A.M. Claimants Kemp and Whittaker were furloughed employees, used to fill temporary vacancies.

Upon failure of the Claimants to report at Midnight, the Agent investigated. He discovered that one of the striking Organizations had re-established a picket line which Claimants refused to cross. During the next hour, the Agent confirmed that the strike had been terminated by PL 90-54 and informed the Claimants that the picket line was illegal. In due course, it is alleged, he also informed them to wait until the picket line was removed or to go home. In this regard, the Claimants allege they were told to go home and not informed to wait. Nevertheless, the second picket line was not removed until 6:00 A.M., July 18, 1967. In this posture, the Claimants contend the Carrier violated the Agreement by its failure to compensate them.

Of course, those of us versed in labor-management relations are fully cognizant of the significance of a legal strike and one of the economic weapons associated with such strike—namely, the picket line. The vaunted phrase of solidarity of labor is best exemplified by a technique which unionists extoll—refusal to cross an established picket line. It is a forceful weapon, employed by labor, to compel management to meet its demands. Of course, Management, on the other hand, has a countervailing weapon in the lockout.

The issue before us in the instant dispute, however, does not require us to discourse on the use of the picket line, in general. We are required, nonetheless, to distinguish between a legal and illegal picket line—and to determine whether the Carrier is liable for payment when employees refuse to cross such picket line.

First, we are compelled to recognize that the reestablishment of the picket line after its abandonment, subsequent to the enactment of PL 90-54, was illegal. Should the Carrier's Agent have anticipated the reestablishment of such picket line? We do not believe that such was reasonably within the contemplation of Management. This act was solely within the purview of the picketing Labor Organization. Hence, it is our view that the Carrier acted in good faith when it notified the Claimants to report for work upon being informed that the original picket line was being abandoned.

Under the circumstances prevalent herein, we are in accord with Award 16746, wherein Referee Friedman stated as follows:

"Their failure to work was the result of a voluntary choice, and the loss of time which resulted therefore requires no recompense under any rule in the Agreement."

Also see Award 14945.

It is, therefore, our considered opinion that the instant claim should be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1969.