



Award Number 17613

Docket Number MW-18204

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
RICHMOND, FREDERICKSBURG AND POTOMAC
RAILROAD COMPANY**

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

- (1) The Carrier violated the agreement when, with less than five (5) work days of advance notice, it abolished the following positions effective at 7:00 A.M., February 8, 1968 by 'NOTICE NO. 4' dated February 7, 1968:

“BB&M Force—Camp Cars
BB&M Force—Trailers
Paint Force
RL&B Force
System Force
Extra Force
M of Way Shop
All Forces Potomac Yard with the following exceptions:
Foreman (Bantam Crane)
Ditching Machine Operator (Bantam Crane)
Two Trackmen
All Miscellaneous Force with the following exceptions:
Foreman—Inspector—Fredericksburg
One Trackman
Foreman—Inspector—Richmond
Speedswing Operator—Richmond
One Trackman’
(System File R-TC-4)

- (2) Each employee who was adversely affected by the Carrier's 'NOTICE NO. 4' be allowed sixteen (16) hours' pay at his respective straight time rate because of the earnings lost on February 8 and 9, 1968.
- (3) Each employee affected by 'NOTICE NO. 4' who suffered the loss of expense allowances be paid the expense allowance he would have received if he had been permitted to work on February 8 and 9, 1968.”

EMPLOYEES' STATEMENT OF FACTS: Because of a strike by the Brotherhood of Railroad Trainmen on the Missouri Pacific Railroad, which began on February 5, 1968, the Carrier decided to drastically reduce its Maintenance of Way forces and issued Notice No. 4 which reads:

abolished positions continued to exist and could have been performed. In my opinion, your position is unrealistic and contrary to the intent of Rule 28(b). When the railroad's operations are partially suspended by a strike, M of W work does not exist in the true sense of the word. The best evidence that such work existed or could have been performed would be for you to show that on February 8 and 9, 1968, employees other than M of W employees performed work. That of course did not occur.

"My position is that the positions held by the claimants involved here were properly abolished under the emergency provisions of Rule 28(b). If the RF&P is struck, or if its operations are suspended in part because of a strike on its connections that put pickets against the RF&P, we will probably be forced to do the same thing we did here. This claim is accordingly denied.

"In closing this letter, I call your attention to the fact that the claimants here received \$10.20 in unemployment benefits on February 8 and 9, 1968. We have received notice from the Railroad Retirement Board that they have a lien for the amounts paid. Accordingly, if you ultimately prevail in this dispute, the amounts paid by the Railroad Retirement Board will be deducted.

"If you desire a conference on this claim, please advise and one will be arranged on a mutually agreeable date."

This claim was discussed in conference on June 6, 1968, and Carrier's Chief Appeals Officer confirmed the conference in a letter dated June 17, 1968 which stated as follows:

"This confirms our conference of June 6, 1968, during which we discussed the blanket claim for a day's pay on February 8 and 9, 1968, for employees whose jobs were abolished by Notice No. 4 of February 7, 1968.

"We explained to you that the strike against the former ACL Railroad resulted in partial suspension of our freight business and total suspension of our 22 passenger trains. As stated in our letter to you of May 13, 1968, it is our position that, under such emergency strike conditions, the work of the claimants ceased to exist or could not have been performed. The notice abolishing the positions was entirely proper under the agreement and the claim must remain declined."

This claim has been handled in the usual manner on the property without adjustment.

(Exhibits Not Reproduced)

OPINION OF BOARD: About midnight on February 6, 1968, the Brotherhood of Railroad Trainmen struck the Atlantic Coast Line portion of this Seaboard Coast Line. As a result of this strike, Carrier suspended 22 of its regularly assigned passenger trains and cancelled many of its freight trains. Although Carrier worked its Maintenance of Way forces on February 7, 1968, it gave 16 hours notice furloughing Claimants because of a strike on the Missouri Pacific Line. As a result of this notice, Claimants did not work on February 8 and February 9, 1968. Settlement of the Seaboard Coast Line was reached and the affected employees returned to work on February 12, 1968.

The Organization contends that Carrier should have given five working days notice in advance of force reduction for the reasons that the work of Claimants continued to exist and could have been performed. Carrier contends that the strike created an emergency causing a drastic cut in revenue which allowed Rule 28 (b) (16 hour notice rule) to be controlling.

This Board finds that the contention of the Organization is well taken. In Award 15858, this Board found that in order to apply Rule 28 (b), two conditions must exist, to-wit:

1. Carrier's operations must be suspended in whole or in part, and
2. The work no longer exists or could not be performed.

On page 5 of Carrier's submission appears the following language:

"The Carrier does not dispute the fact that to an extent the work performed by maintenance of way employes immediately prior to the emergency force reduction continued to exist during the strike and could have been performed."

The above quotation removes any doubt that Rule 28(b) does not apply in this instance and that Claimants should have been given five (5) working days advance notice when these positions were abolished. (See Awards 3701, 3702, 3715, 14834, 15971 of this Division and Awards 1738, 2195, and 4411 of the Second Division.)

However, there being no contention or showing that Claimants reported for duty or were out any expense for the dates in question (February 8 and 9, 1968) part three (3) of this Claim will 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 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 violated in accordance with the Opinion.

A W A R D

Claim Paragraph 1 sustained.
Claim Paragraph 2 sustained.
Claim Paragraph 3 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1969.