



Award Number 17674

Docket Number SG-18142

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**CHICAGO AND NORTH WESTERN RAILWAY COMPANY
(Former CGW Railway Company)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago Great Western Railway that:

1. The Carrier violated the current Signal Employee's Agreement in particular Rule No. 39 when on Sunday July 16, 1967, employees were improperly notified by telephone that their respective positions were abolished effective at 8:00 A.M., Monday, July 17, 1967.
2. The Carrier further violated the Signal Employee's Agreement in particular Rule No. 57 by issuing bulletins on July 20, 1967, advertising vacancies existed on all positions in the signal department although a bulletin notifying employees of a force reduction had not been issued.
3. The Carrier now be required to compensate the following employees at their respective rates of pay for all time lost resulting from improperly notification of force reduction and being held out of service following termination of Machinists strike.

Signal Inspectors K. W. Van deWalker and P. D. Greco for July 17, 18 and 19, 1967.

Relay Repairman P. C. Wall for July 17, 18 and 19, 1967.

Foreman D. W. Hockens for July 17, 18, 19, 20, and 21, 1967.

Signalman C. D. McPhail for July 17, 18, 19, 20 and 24, 1967.

Assistant Signalman P. J. Cartney for July 17, 18, 19, 20 and 21, 1967.

Signal Helpers C. L. Cronin, J. Sorensen and T. Grimley for July 17, 18, 19, 20 and 21, 1967.

Signal Maintainers A. R. Sorensen, G. A. Schmidt, M. Byrd, A. A. Aschbrenner, T. G. Grace, L. E. McLamarrah, P. P. Jones, T. R. Vaughn, F. J. Faughn, J. D. Reich, T. R. Duffy, W. D. Eastman, W. L. Payne, R. J. Steffen, L. J. Byrns, J. Grant, M. D. Eyllo for July 17, 18 and 19, 1967. [Carrier's File: S-9]

EMPLOYEES' STATEMENT OF FACTS: On Sunday, July 16, 1967, Carrier notified claimants by telephone that their positions were abolished ef-

OPINION OF BOARD: Due to a strike by other railroad employees, Carrier notified Claimants by telephone on Sunday, July 16, 1967, that their positions were abolished effective 8:00 A.M. on Monday, July 17, 1967. Subsequently, on July 20, 1967, Carrier issued a bulletin advertising vacancies on all positions in the Signal Department. Claim was filed for time lost by Claimants based on the Organization's contentions that Carrier should have issued a written notice abolishing Claimant's positions and that even if written notice was not required, that the work of Claimants continued to exist and could have been performed. Carrier contends that written notice is not required in event of an emergency such as existed in this case (Strike) and that because of the strike, the work of Claimants ceased to exist.

The question of whether or not written notice was required in this instance has been resolved in Award 17014 (Criswell) which held that Sec. (c) of Rule 14 does not require written notice in emergency situations.

Therefore, the only questions to be resolved in this dispute is whether or not the work of Claimants continued to exist or could be performed during the emergency condition caused by the strike.

It is true that the Organization has alleged that work of these Claimants continued to exist and could have been performed; however, the record is void of any probative evidence supporting this allegation. Unless the Organization proves a claim by probative evidence, that Claim will be denied. See Awards Nos. 10166, 9783, 11224, 15584, 15060 and many other Awards on this same point with identical conclusions.

This Board is not unmindful of and does not contradict Awards Nos. 15971 and 11214 which hold that a mere reduction of the work force alone does not establish an emergency which required Carrier to suspend its operation in whole or in part. However, these sustaining Awards (15971 and 11214) show that in those cases, the Organization sustained its burden of proof that work remained and could be performed. The instant case is therefore distinguished and does not overrule the sound principles set out in the two Awards cited in this paragraph.

Also, in Award 14834, cited by the Organization, there was a finding that work of Claimants continued to exist and could be performed during the strike in that instance. Here, we are unable to find any probative evidence contained in the record before us that will uphold such a finding; to find otherwise in this case, based on the record, would constitute unauthorized conjecture and speculation.

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 22nd day of January 1970.