

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

John H. Dorsey, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF RAILROAD SIGNALMEN****ERIE - LACKAWANNA RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie-Lackawanna Railroad Company:

On behalf of Leading Signalmen T. W. Shoemaker, Signalmen M. A. Yetman, V. R. Abbott, D. R. Chess, V. C. Losey, E. B. Mangus, and Signal Helper D. J. Williams for eight (8) hours' pay, Monday, July 17, 1967, account Carrier violated the 16-hour provision of Article VI of the August 21, 1954 Agreement. (Carrier's File: Sig. Item 154.)

EMPLOYEES' STATEMENT OF FACTS: Claimants named herein were employes of the signal shop at Meadville, Pa., when this dispute arose, working under the direction of Signal Foreman T. W. Gladys. Their assigned hours were 7 A. M. to noon, and from 12:30 P. M. to 3:30 P. M., five days per week.

At about 10:00 P. M. on July 16, 1967, Mr. Gladys telephone claimants at their homes, advising them their jobs were abolished due to a strike by Shop Craft employes, and that they should not report for work the next day.

About 6 or 6:30 A. M. the next day, Mr. Gladys delivered Bulletin No. 1, which is attached hereto as Brotherhood's Exhibit No. 1.

Under date of July 26, 1967, the Brotherhood's Local Chairman presented a claim for eight hours' pay for each claimant, account Carrier violated the 16-hour advance notice provision of Article VI of the August 21, 1954 Agreement. The General Chairman later contended the men should have been given no less than five working days advance notice as their work continued to exist and could have been performed despite the strike.

As indicated by correspondence attached hereto as Brotherhood's Exhibit Nos. 2 through 11, the claim was subsequently handled to a conclusion on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving satisfactory settlement.

There is an agreement in effect between the parties to this dispute, bearing an effective date of March 1, 1953, as amended, which is by reference made a part of the record in this dispute. The August 21, 1954, and June 5, 1962 National Agreements are also by reference thereto made a part of this record.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: On July 15, 1967, the Shop Crafts System Federation advised that the Erie-Lackawanna Railway Company was not one of the railroads selected for the strike called for July 17, 1967, at 12:01 A.M. However, on Sunday, July 16, 1967, at approximately 4:00 P.M., Carrier was notified by the System Federation that the Erie-Lackawanna was to be included. On learning this, the General Chairmen of the various other crafts were contacted as soon as possible to determine if their members would honor picket lines established by the striking shop craft employees. The General Chairman of the Petitioning Organization could not be located, however, all of the other General Chairmen contacted advised that their employees were duty bound to do so. Based thereon, Carrier was forced to promptly personally notify all employees it could that because of the emergency, positions were annulled effective July 17, 1967.

Picket lines were established by Shop Craft Employees system-wide.

Claim was instituted by the Local Chairman on July 26, 1967, (Carrier's Exhibit "A"), denied, and thereafter handled on appeal up to and including Carrier's highest officer designated to handle such matters (Carrier's Exhibit "B") where it was discussed in conference and denied with denial confirmed on March 15, 1968 (Carrier's Exhibit "C"). Subsequent exchange of correspondence is identified as Carrier's Exhibits "D" and "E."

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants were assigned to the signal shop at Meadville, Pennsylvania, working under the supervision of Signal Foreman T. W. Gladys. Their assigned hours were 7:00 A.M. to noon; and 12:30 P.M. to 3:30 P.M.

Shop Crafts System Federation notified Carrier on Sunday, July 16, 1970 at about 4:00 P.M. that its railroad would be struck beginning July 17, 1967, at 12:01 A.M.

At about 10:00 P.M., July 16, 1967, Foreman Gladys telephoned Claimants at their homes. He informed them that their jobs were abolished due to the strike by Shop Craft employees; and that they should not report for work the next day. The advance notice of abolishment was given, therefore, approximately nine (9) hours prior to it becoming effective.

About 6:00 or 6:30 A.M. on July 17, 1967, Foreman Gladys delivered to Claimants a written bulletin signed by the Chief Signal Engineer which listed their positions, among others, immediately following the statement:

"Account Strike Emergency Shop Craft Employees, 12:01 A.M. D.S.T., July 17, 1967, making operation of railroad impractical, the following positions in Signal Shop, Meadville, Pa. are abolished at regular starting time Monday, July 17, 1967:" (Emphasis ours.)

On July 18, 1967, about 2:30 A.M. Foreman Gladys telephoned Claimants notifying them to return to work at 7:00 A.M. that morning.

Organization filed claim alleging that Carrier violated the Agreement by failure to give Claimants timely notification of abolishment of their positions as contractually mandated in Article VI of the August 21, 1954 National Agreement. It makes demand for damages incurred, due to the alleged viola-

tion, for "eight (8) hours' pay, Monday, July 17, 1967," for each of the Claimants.

The proffered defenses of Carrier are: (1) the strike created an emergency which caused it to abolish the positions; (2) "in order for Petitioner to prevail it must show that the Claimants were available for service on the date of the claim and this it manifestly cannot do as the Claimants could not and would not have crossed the picket lines established at each location;" and (3) "the Railroad Retirement Board Legal Department ruled this as a strike embracing all employes and that they were all entitled to unemployment benefits for the day."

Article VI of the August 21, 1954 National Agreement reads in pertinent part:

"Rules, agreements, or practices, however established that require more than sixteen hours advance notice before abolishing positions or making force reductions are hereby modified so as not to require more than sixteen hours such advance notice under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike, provided the Carrier's operations are suspended in whole or in part and provided further that because of such emergency the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employes involved in the force reductions no longer exists or cannot be performed." (Emphasis ours.)

From the record we find: (1) the strike created an emergency condition; (2) Carrier's operations were suspended in whole or in part; (3) the work of Claimants' positions continued to exist and could have been performed by them on July 17, 1967; (4) Carrier did not give Claimants at least sixteen (16) hours notice prior to abolishment of their positions.

Carrier's defense that the Claimants would not be available for work on July 17, 1967, was founded on a presumption as to what Claimants could have and would have done in the absence of notification of job abolishment. The presumption is without probative value — it is not supported by declaration or overt action by Claimants or the Organization. Therefore, the defense that the Claimants would not have been available for work on July 17, 1967, is without merit.

What findings or actions were made or undertaken by the Railroad Retirement Board in the exercise of its statutory powers is not material or relevant. The Railway Labor Act vests this Board with exclusive statutory jurisdiction to interpret and apply the collective bargaining agreement.

For the foregoing reasons we will sustain the Claim.

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