Award No. 18263

Docket No. CL-18512

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6715) that:

1. The Carrier violated the established practice, understanding and provisions of the Clerks' Agreement, particularly, the Scope Rule, Rules 5-A-3, among others, and Agreement 47 when it failed to call Industrial Truck Driver G. R. Reed, Store Department Laborers V. Orrei, S. LaDolce, C. E. Kmiotek, and Stores Attendant E. J. Kmiotek, to work in the main Storeroom, Morris Park on February 23, 1969, instead used Chauffeur L. Walker to drive the Hi-LO, three laborers (Auto Truck Laborer J. Porter and two laborers from the shop crafts) to unload brake shoes from a freight car at the main storeroom and failed to have a store attendant to charge out the material.

2. The Carrier shall pay Stores Attendant E. J. Kmiotek, Industrial Truck Driver G. Reed, Laborers V. Orrie, S. La Dolce and C. E. Kmiotek eight hours at the rate of time and one-half for February 23, 1969, and everyday thereafter until the violations are stopped.

EMPLOYES' STATEMENT OF FACTS: There is in effect a Rules Agreement effective July 1, 1945 and a revised Agreement effective January 1, 1965 which includes a revised and amended Scope Rule, effective April 1, 1964 which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, as amended, and also with the National Railroad Adjustment Board, covering clerical, other office, station and storehouse employes, between this Carrier and this Brotherhood. The Rules Agreement will be considered a part of this statement of facts. Various Rules and Memorandums therefore shall be referred to from time to time without quoting in full.

This dispute involves the Carrier arbitrarily and deliberately ordering Chauffeur Walker, Laborer Porter and two Shop Craft Laborers to suspend

OPINION OF BOARD: Auto-truck department employes, (Dunton Electric Car Shop) at the direction of Carrier's Assistant Foreman, unloaded boxes of brake shoes from a freight car at Morris Park Shops. Two of such employes (Shop Craft Laborers) were not covered by the Clerks' Agreement. Morris Park Shops is some distance from the Dunton Electric Car Shop. February 23, 1969 was a Sunday. Claimants were not at work on that day. It was one of their scheduled rest days.

Petitioner contends that the Carrier violated Rule 1 (Scope), Rule 4-C-1 (Absorbing Overtime), Rule 5-A-3 (Work on Unassigned Days) and Agreement No. 47. Rule 4-C-1, 5-A-3 and Agreement No. 47 are particularly significant.

Carrier argues (1) that Petitioner has not met the burden of proof necessary to sustain a violation of any Rule in the Agreement and (2) that the work was performed because of an existing emergency.

From all of the evidence in the record, it must be concluded that the work does belong to employes assigned to Morris Park Shops, covered by the Clerks' Agreement. The essential facts as above stated have never been denied by the Carrier. Petitioner's factual allgations in the correspondence, and in conferences on the property, are not mere assertions. Since this basic facts are uncontroverted, a violation of the contract rules, as presented to the Carrier on the property and in the submissions to this Board, exists.

It becomes necessary to determine if an "emergency" existed which necessitated the use of auto-truck department personnel to unload the boxes of brake shoes. No stores employes were at work in the warehouse on February 23, 1969. They were all on their regularly scheduled rest day. On March 14, 1969 Carrier's Chief Mechanical Officer wrote to the General Chairman, in part, as follows:

> "It was determined by the auto-truck personnel who were then working on overtime that the brake shoes were not readily available. They were contained within a brake shoe car located at the unloading platform adjacent to the stores platform. They were scheduled to be unloaded on the next working day, February 25th, 1969. In view of the emergency situation which involved several cars that had to be completed at Dunton, the auto-truck personnel with the assistance of certain shop laborers did in fact unload two boxes of brake shoes. These cars were necessary to complete scheduled passenger trains for the transportation department."

In all subsequent handling of the claims, Carrier continued to assert the emergency defense.

The acceptable and convincing facts in the record shows that there was a shortage of passenger cars necessary to maintain normal service; that shop craft employes were at work on this Sunday at overtime pay to expedite the repairs; that a great many passenger cars needed to be repaired so that they could be returned to service; that on Friday, February 21, 1969, the Carrier was 169 cars short of the number needed to normal operations of the trains; that this car shortage came about from an organized slowdown by some of Carrier's employes; that because of the car shortage, two (2)

trains were cancelled on February 21, 1969; that the cars were available but were in the shop for necessary repairs.

Nowhere does the Petitioner categorically refute these facts. Only generalities are asserted to the effect that the "Carrier knew in advance they did not have sufficient brakeshoes available over a three day period from February 22, 1969 to February 25, 1969 inclusive . . ." No concrete evidence is offered that the Carrier knew of the brake shortage on February 22. The quoted allegation is a mere assertion and not evidence. And this is so without regard to Carrier's denial of Petitioner's assertions.

It has long been recognized by this Board that emergencies when they arise in the railroad industry are given serious and frequently special consideration in disputes arising between management and employes. In legitimate emergencies, the Carrier is given great latitude in assigning work to employes even if, in the absence of bad faith, such assignments may be erroneous. See Awards 16312, 16318, 15219, 14372, 13626, 12299, 12777 and others.

An emergency did exist on the date of the claim. There is no convincing evidence that Carrier knew or should have known that brake shoes would be needed on Sunday, February 23. Nor is there any evidence of bad faith. As far as the record is concerned, this was an isolated situation. Petitioner has not shown that the Carrier wilfully violated the cited rules. This, of course, is not an invitation to the Carrier to disregard its obligations under the contract. But here the Carrier was under severe pressure to rehabilitate defective cars and maintain their passenger service. Under all these circumstances, we are obliged to conclude that an emergency existed and that the claim, therefore, must 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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Dated at Chicago, Illinois, this 13th day of November 1970.