NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19529
THIRD DIVISION Docket Number CL-19555

Alfred H. Brent, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees
(The Central Railroad Company of New Jersey
(R. D. Timpany - Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7050), that --

(A) Carrier violated Rule Nos. 7(b), 9(b)(5), Article 4(b) of Memorandum of Agreement effective November 1, 1955 (as revised effective March 1, 1961), and other rules of the Clerks' Agreement, on December 9, 1970, at Dock 13, Jersey City, New Jersey, when they failed to order out Gang No. 46 (1 Checker and 4 Laborers) on the second trick and

(B) Carrier shall be required to compensate Messrs. J. Liptak (Checker) and J. Goode, J. Chasnocha, G. Dudley and M. Gebrian (Laborers) an additional day's pay, at existing rate plus national increase, for December 9, 1970, and

(C) Carrier shall be required to compensate the first furloughed Group 1 employee as Checker, and four (4) furloughed Group 2 employees as Laborers a day's pay each at the existing rate, plus national increases for December 9, 1970.

OPINION OF BOARD: On December 9, 1970, in anticipation of a strike called for 12:01 a.m. by the clerks' organization of the Carrier, the World Trade Center requested the Carrier to load all steel possible for transshipment to the World Trade Center site so that their construction work would not be affected by the strike at the rail yards. The carrier, therefore, polled all 15 men on the first shift to work overtime, but all the men refused with the exception of an extra laborer, who was qualified as a crane operator. This laborer was assigned to work overtime as a second crane operator to assist the regular second shift crew.

The Organization contends that the Carrier operated two cranes with one hoisting gang and that this is a violation of the Manning Tables as set forth in Article 4(B) of the memorandum of agreement effective November 1, 1955 and revised March 1, 1961, which reads as follows: "Hoisting gangs shall consist of one (1) checker, one (1) Crane operator and four (4) Laborers for each crane operated." It is not disputed that the Carrier operated two (2) cranes with one (1) hoisting gang.

In addition, the Organization claims that the Carrier should have commenced to call in Gang #46 which had been furloughed at the close of business on December 4, 1970 before anyone was offered overtime.

The Carrier submits that it "is entitled to some degree of discretion in the application of these rules in light of the circumstances as more fully related below:

"It is Carrier's position that an emergency condition existed, in view of the request of the World Trade Center eleven hours in advance of a scheduled strike by the craft whose members normally perform the work required, and there was insufficient time in which to call out furloughed employees. Carrier was not motivated by an intent to circumvent the agreement, nor did it act in a capricious or arbitrary manner, especially in view of our attempt in requesting employees to work overtime, but acted prudently and in good faith to meet the emergency in the best interest of its business. Carrier's responsibility to its shippers should not be taken lightly nor disregarded, as it is our inherent duty to arrange work in such a manner as to provide efficient, economic and satisfactory service to its shippers."

"Emergency has been defined as an unforeseen combination of circumstances requiring immediate action, and this Board, as well as other Divisions, have consistently recognized that a Carrier, in an emergency, has a much broader latitude in its operation in assigning employes than under normal circumstances, and should not be obligated to exercise that care and thoughtfulness in its action which would be required under ordinary conditions. A position which is created by an emergency is, by its own nature, temporary, and is limited not only by the duration of the emergency but also by the length of time employes can reasonably and effectively provide a service."

The nub of this dispute is whether an emergency existed on December 9, 1970 which would relieve the Carrier of its responsibility to abide by the provisions of the agreement cited above. This Board has defined emergency as an unforeseen combination of circumstances requiring immediate action and has consistently recognized that if in fact an emergency exists a Carrier has much broader latitude in making assignments than under normal circumstances. (Awards #3514, 11151, 16346)

It is not disputed that the Carrier had ample advance notice of the clerks' strike and that the World Trade Center made its request eleven (11) hours before the strike deadline. Therefore, there was ample time for the Carrier to call the furloughed gang before attempting to double regularly assigned employees. This Board finds that the circumstances of this case were not of an emergency nature which would relieve the Carrier from making reasonable efforts to abide by the rules of the agreement.

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.

A W A R D

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E A Kellum
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1972.