

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 19836
Docket Number CL-19885

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
PARTIES TO DISPUTE: {
(**J. F. Nash and R. C. Haldeman**, Trustees of the Property of
(Lehigh Valley Railroad Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**CL-7132**)
that:

(a) Carrier violated the Agreement between the parties effective **as**
revised **May** 1, 1955, when it locked out employees in the General Offices, posting
notices that the positions were suspended May 17 and 18, 1971, due to strike of
Signalmen, and then used Supervisory and Excepted Personnel to perform **various**
clerical duties on both those dates.

(b) The Carrier shall be required to compensate the following regularly
assigned employes, whose work and positions were covered and performed by Super-
visory and Excepted Personnel, on May 17 and 18, 1971, as follows:-

| <u>NAME OF CLAIMANT</u> | <u>ASSIGNED POSITION</u> | <u>TIME CLAIMED</u> |
|--------------------------|----------------------------|---------------------|
| Lorraine Hartzell | Timekeeper | 1 days pay |
| Ann Wean | " | 1 days pay |
| Christine Gaspar | " | 2 days pay |
| Anna Marie Kacar | Payroll Control Clk. | 2 days pay |
| M. A. Bartholomew | Elec. Cal. Operator | 1 days pay |
| Dianne Miller | " " " | 1 days pay |

OPINION OF BOARD: On May 17 and 18, 1971, a strike **was** conducted against the
Carrier by its Signalmen. The Organization herein claims
that the Carrier violated its agreement with the Organization during those two
days, when work reserved to clerks was performed by employees not covered by the
terms and provisions of the agreement.

Before considering the merits of the dispute, the Board is disposed
to consider a procedural argument raised by the Carrier. The Carrier suggests
that the claim does not meet the requirements of the August 21, 1954 National
Agreement in that the initial claim submitted is "vague and indefinite." We dis-
agree with that assertion, based upon our examination of the correspondence sub-
mitted on the property. We note that the initial claim named the **Claimants**, cited
three rules which were allegedly violated, and argued that work connected with
posting time, extending payrolls, taping time books, etc., was performed by super-
visory employees. The Board is of the view that the claim, rather than being
"vague and indefinite" was, quite to the contrary, specific. Accordingly, based
upon the record before the Board, we reject the Carrier's assertion that the claim
failed to meet the requirements of the August 21, 1954 National Agreement. (Rule
33 of the parties Agreement).

Concerning the merits of the dispute, it is considered self-evident that a **claim** of this nature **may** be sustained only if there is a showing that the **employees** were available and willing to perform work on the **17th** and 18th of **May**, 1971 during the Signalmen's strike. It is equally obvious that in order for Claimants to have reported for and performed the **work** in question, they **would** have had to **cross** the **Signalmen's** picket Lines and work behind said Lines during their regular tours of duty.

The Board has considered the determination of the Second Division in Award No. 4494 (**Anrod**). That Award considered the philosophical aspects of picketing, its purpose and results:

"Picketing is a method of social control conventionally used by unions in furtherance of a labor dispute. Specifically, unions regard picketing as an indispensable adjunct of strikes because the **successful outcome** of a strike largely depends on the success of the strikers in dissuading employee from entering the premises to work..... It is a fact commonly known throughout the industrial world as well as throughout the jurisdiction in and for which this Board is sitting that unionists do not generally cross a picket line established around **a** strike-bound enterprise as a manifestation of union solidarity and unity of action. This fact is indisputable and beyond question...."

After citing various treatises on the subject, the Second Division concluded that:

"In the light of the above findings of recognized researchers **as well** as of our own knowledge of the realities of industrial life, we take official notice of the fact that, irrespective of the motivations of individual workers, union **members will not usually** cross a picket line. This is particularly true with respect to railroad unionists because of their traditional loyalty to union philosophy and ideals...."

This Board has no quarrel with Award No. 4494, insofar **as** it states a "presumption." This Board does, however, conclude that the presumption is rebuttable in a given case, and we feel that the Second Division recognized that factor when it stated at Page 13 of its Award that:

"... union members will not usually cross a picket line."

The record here is devoid of any evidence to suggest that the Claimants attempted to report to **work**, or that they would have crossed, and worked behind, the picket line.

Thus, no evidence indicates any rebuttal to the presumptions stated in Second Division Award No. 4494, and for **that** reason the **claim** must be dismissed. To rule otherwise could open the door to claims when individuals had **no** intention of reporting to duty. To preclude such a possibility, the Claimants must show a good faith effort to report for duty and **a** desire to **perform** their **normal** duties in order to prevail.

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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 claim be dismissed.

A W A I? D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. G. Killen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1973.