NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20508
THIRD DMSION Docket Number CL-20310

Joseph Lazar, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-7330) that:

1. Carrier violated the rules of the current working agreement when on May 19 and May 20, 1971, they notified Clerks L. Pullara and R. W. Hazelet not to report for work on their regular assigned positions.

2. Clerks L. Pullara and R. W. Hazelet be compensated one days pay each for May 19 and May 20 at the punitive rate of pay of the positions to which they were regularly assigned.

OPINION OF BOARD: Claimants L. Pullara and R. W. Hazelet held positions dealing with LCL work on District No. 8, Tamps Division, when their positions were abolished on May 19 and May 20, 1971. At 6:00 a.m. on May 17, 1971, the Brotherhood of Railroad Signalmen placed pickets at principal terminals and selected points all over the country. Wherever picket lines appeared, they were observed by contract employees and it was necessary for Carriers to suspend operations of trains or drastically curtail movement of trains, using supervisory personnel in a very limited operation. The strike continued on this Carrier's property from 6:00 a.m., May 17, 1971, until 2:25 a.m., May 19, 1971. There were no pickets at the Tampa, Florida Freight Station which caused as a consequence of picketing any suspension of work by other employees. Carrier's facilities and operationa in the Tampa area include a large freight office, warehouse combination at Tampa from which most all of the duties and operations are carried on and performed relating to the handling of all types car load freight, piggy back freight, less car load freight both inbound and outbound. At points where the clerical employees were working during the strike, as at Tampa, where no pickets had been placed, as long as there was work, such as backlog work, or work to be caught up, employees remained on duty. At such times as the work was exhausted and stopped flowing into the various areas, according to the Carrier, forces were reduced. The Carrier states that as a result of this work stoppage, all LCL freight involved in the positions of Claimants ceased to flow Into the agency and the Carrier thereupon abolished temporarily their positions. Claimants' positions were abolished on May 19 and May 20, with Claimants being advised by telephone on the afternoons of May 18 and May 19. As soon as

the flow of LCL work became sufficient to recall these two employees following the strike, they were recalled and resumed their normal duties. Other work than LCL work existed at Tampa to which Claimants might have exercised their seniority, but they chose not to work the junior employees' positions.

Although it is not crystal clear from this record that the LCL work of Claimants did not exist on May 19 and May 20, we note the statements by the Organization that "It might be true there was some fluctuation of work on the two days following the Signalmen's strike" (R12), and that "Sufficient work remained in other departments of the freight agency and at other locations in the Tampa, Florida terminal where carrier could have used claimants due to the backlog of work all of which was in the same seniority district." (R40). We are satisfied from the record that the Carrier has established by a preponderance of the evidence its burden of proving that the LCL work of claimants did not exist on May 19 and May 20. See, in this connection, Award Number 20259 by Referee Frederick R. Blackwell.

The February 25, 1971, National Agreement, Article VII, is relied upon by both parties and governs the determination of this dispute. The Organization relies upon Article VII(a) language, while the Carrier relies upon Article VII(b):

"ARTICLE VII - FORCE REDUCTION RULE

Insofar as applicable to the employees covered by this Agreement, Article VI of the Agreement of August 21, 1954 is hereby amended to read as follows:

(a) Rules, agreements or practices, however established, that require advance notice to employees before abolishing positions or making force reductions are hereby modified to eliminate any requirement for such notices under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire or labor dispute other than as covered by paragraph (b) below, provided that such conditions result in suspension of a carrier's operations in whole or in part. It is understood and agreed that such force reductions will be confined solely to those work locations directly affected by any suspension of operations. It is further understood and agreed that notwithstanding the foregoing, any employee who is affected by an emergency force reduction and reports for work for his position without having been previously notified not to report, shall receive four hours' pay at the

"applicable rate for his position. If an employee works any portion of the day he will be paid in accordance with existing rules.

(b) Rules, agreements or practices, however established, that require advance notice before positions are abolished or forces are reduced are hereby modified so as not to require advance notice where a suspension of a carrier's operations in whole or in part is due to a labor dispute between said carrier and any of its employees."

The Organization argues that the language of Article VII(a), "It is understood and agreed that such force reductions will be confined solely to those work locations directly affected by any suspension of operations" is applicable here, and that since Tampa, Florida was not such a work location, the Carrier is in violation. Also, the Organization argues that the strike was over by the date of the abolishment of Claimants' positions, and therefore there no longer obtained emergency conditions supporting the abolishments. As to this latter contention, we note the language of Second Division Award No. 6412, Referee Irwin M. Lieberman:

"First as to the emergency, we do not believe that a stroke of the pen can terminate the state of emergency instantly; it normally would take some time to restore operations. As an analogy, we do not believe that shut-down caused by an emergency due to a blizzard or a flood, for example, ends automatically when the last snow flake has fallen or when the high water mark has passed."

(See also, in this connection, Second Division Awards Nos. 6411, 6431, 6475, 6513.)

The compelling answer to the Organization's contentions, however, simply is that Article VII(b) and not Article VII(a) is controlling. The facts show: (1) that the Carrier here was involved in a labor dispute with its employees represented by the Brotherhood of Railroad Signalmen; (2) that there was a suspension of the Carrier's operations of LCL in whole or in part at Tampa, Florida; and (3) the suspension of the Carrier's LCL operations in whole or in part at Tampa, Florida was empirically connected and causally related or "due to" the labor dispute between the Carrier and its employees represented by the Brotherhood of Railroad Signalmen. The dates in question, May 19 and May 20, were unquestionably "on the heels of the strike" and the causal *connection* between the nonexistence of the LCL work and the strike is hot doubted. We nay observe in this connection that the universal Carloading & Distributing Co., Inc.

arbitration involved the abolishment of positions during a strike and not "on the heels of the strike" as in the present case, and Arbitrator Charles W. Anrod in that arbitration, relied upon here by the Organization, found that the work of the abolished positions there continued to exist and could be performed although there was a strike. The Universal Carloading & Distributing Co., Inc. case is not pertinent here. On the other hand, in Public Law Board 405, Award No. 116, Referee John Criswell, where the Board found that the work of claimants "disappeared because of the labor dispute and resultant suspension", Article VII(b) of the February 25, 1971 led to the denial of the claim therein. In the circumstances of the present case, we find that Article VII(b) and not Article VII(a) is applicable. (For a holding based on Article VII(a), see Award No. 20059, Referee Irving T. Bergman, involving a non-struck Carrier). We must deny 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

That the Agreement has not been violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 8th day of November 1974,