NATIONAL RAILROAD ADJUSTMENT BOAW

Award Number 20614
THIRD DIVISION Docket Number CL-20529

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and station Employes
(Union Pacific Railroad Company
(South-Central District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7497) that:

1. The Carrier violated the current controlling Agreements between the Brotherhood of Railway, Airline and Steamship Clerks and the Union Pacific Railroad Company when, on August 2, 1971, the strike of the United Transportation Union was settled and Carrier thereafter failed to return clerical forces at Salt Lake City, Utah to the service of the Carrier on the first full shift following settlement of the strike.

2. Carrier shall now be required to compensate the following Claimants for wage Loss suffered by them amounting to eight (8) hours' pay daily at the rate of the position held on July 15, 1971 commencing with the first full tour of duty following termination of the strike on August 2, 1971 and continuing until each of the Claimants were actually returned to service.

J. M. Alvey
H. L. Anson
E. 0. Apgood
J. H. Back
N. T. Back
F. Q. Ball
C. W. Barnard
F. Benich, Jr.
R. W. Bills
C. J. Chipp, Jr.
C. B. Compton, Jr.
M. L. Compton
E. A. Derrick
C. R. Dutton
L. G. Dutson
C. B. Eaby
D. F. Eldredge
C. T. Ernest
J. T. Ernest
G. F. Bishop
G. Boshard
S. R. Boyt
R. L. Brown
J. M. Bruno
J. A. Bushnell
H. E. Carlson
S. E. Carlson
H. B. Carson
D. N. McMillan, Jr.
F. M. Merrill
A. J. Mitchell
D. Nay
N. J. Ogaard
K. 0. Pendleton
W. R. Pendleton
K. A. Perry
E. H. Pewtress
R. L. Putnam

L. Gordon
J. C. Greenwood
F. E. Gregovich
I. C. Hadley
J. F. Handy
W. Hatch
H. A. Hultgren
D. J. Ipsen
T. A. James
G. M. Johnson
R. T. Johnson, Jr.
R. 0. Larsen
J. K. Liedtke
M. A. Livingston
P. M. Lund
G. L. McCann
B. McMillan
B. C. Richards
K. G. Richins
W. V. Richins
R. Romano
D. J. Roothoff
F. Sanchez
W. Stott
G. L. Swallow
J. B. Thomas
W. Wharram
J. G. Wilkinson, Jr.
J. T. Williams
C. M. Woolard
J. A. Workman
W. F. VanZomeren
L. H. Shulsen

OPINION OF BOARD: First we must deal with the procedural issue raised by the Carrier. The Carrier contends that this Board has no jurisdiction to consider the merits of these claims because of the alleged failure of the Organization to discuss the claims in conference prior to instituting action before this Board. This Board finds from an examination of the entire record established on the property, that the conference requirement was sufficiently satisfied to allow the Board to consider the merits of this case.

A strike against the Carrier by the UTU extended from July 16, 1971 to 12:OL P.M. August 2, 1971, a period of seventeen days. The Carrier, in accordance with the provisions of the February 25, 1971 Agreement, notified all employes that their positions ware abolished because of the UTU strike. When the strike ended on August 2, 1971, the Carrier returned employes to service as the Carrier's needs required.

The Organization contends that the Carrier either violated the letter agreement of April 9, 1964 (sometimes referred to in the record by the Organization as the "Strike Standby Agreement"), which requires that when the Carrier reduces forces because of a strike, all employees whose positions are temporarily suspended will return to their regular positions at the start of the first full tour of duty following termination of the strike; or, the Organization contends, if the April 9, 1964 Agreement is not now in effect, then no agreement existed permitting the Carrier to return employes to their former positions, and therefor the Carrier violated the provisions of the Schedule Agreement, specifically Rules 17 and 18.

The Carrier contends that as a result of the UTU strike, the Carrier's operations were brought to a complete standstill and forces were properly reduced under provisions of Article VII of the National Agreement of February 25, 1971; and that the Carrier returned forces to work in a proper manner.

First let us consider the Organization's contention that the letter agreement of April 9, 1964 was properly applicable to the instant case. The subject matter of the Agreement of April 9, 1964 deals with procedures for "the temporary suspension of positions covered by the agreement...in the event of a strike...." Article VII of the National Agreement of February 25, 1971, entitled "Force Reduction Rule", deals with procedures for the reduction of forces in emergency conditions, such as labor disputes causing suspension of carrier's operations. We therefore find that the April 9, 1964 agreement was superseded by Article VII of the February 25, 1971 National Agreement. (We do not decide the contentions made by the Carrier that the letter agreement of April 9, 1964 was a mere ad hoc understanding applicable only to an imminent strike, and not intended to have general and future application to other strike situations).

We find that the claimants' positions were properly and legally abolished under the provisions of Article VII of the National Agreement of February 25, 1971. The Organization clearly does not dispute the propriety of the abolishment of the claimants' positions. There is no provision in the National Agreement of February 25, 1971 which would require that the claimants should have been returned to service immediately following the strike. The parties to the February 25, 1971 Agreement have put no Limitations upon the duration of a temporary force reduction due to a strike and this Board is not empowered to rewrite the agreement of the parties. However, implicit in Article VII of the Agreement of February 25, 1971 is the requirement of good faith on the part of the Carrier. There is no evidence of vindictiveness on the part of the Carrier; nor do we believe the manner in which the employes were returned to service was unreasonable or contrary to the Agreement. See Second Division Awards 6411 (Lieberman), 6513 (Franden) and 6560 (Schedler) for persuasive discussion relating in a general way to the instant case. We must deny the claims.

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.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February 1975.

LABOR MEMBER'S DISSENT TO
AWARD 20614 (Docket CL-20529)

Award 20614 (Referee Twomey) is in palpable error. The third paragraph of the Opinion of Board correctly sets forth the issue:

> "The Organization contends that the Carrier either violated the letter agreement of April 9, 1964 (sometimes referred to in the record by the Organization as the 'Strike Standby Agreement'), which requires that when the Carrier reduces forces because of a strike, all employees whose positions are temporarily suspended will return to their regular positions at the start of the first full tow of duty following termination of the strike; or, the Organization contends, if the April 9, 1964 Agreement is not now in effect, then no agreement existed permitting the Carrier to return employes to their former positions, and therefor the Carrier violated the provisions of the Schedule Agreement, specifically Rules 17 and 18."

After correctly and precisely setting out the issue, one would think that the issue would then be decided. Instead, however, the Award avoids the issue and sets cut a litany of gratuitous statements of such profound findings as: "We find that the claimants' positions were properly and legally abolished under the provisions of Article VII of the National Agreement of February 25, 1971" end "There is ho evidence of vindictiveness on the part of the Carrier."

Never was it argued that the abolishment of Claimants' positions was improper or illegal. Nor was a contention made that vindictiveness occurred on the part of the Carrier. The Organization recognized that Claimants' jobs were properly abolished and never claimed that the abolishments were not legal. The Referee recognized this, because immediately following his "profound" conclusion that the positions "were properly and legally abolished," he writes: "The Organization clearly does not dispute the propriety of the abolishment of the claimants' positions. "

Perhaps the majority intentionally dwelt on issues that were not in dispute to avoid correct consideration of the real dispute, which was the method of recall of employes following the termination of the strike. It is universally recognized that an employe affected by force reduction and unable to displace a junior employe reverts to the furlough list from which recall in seniority order occurs when work next becomes available. Absent a special agreement or understanding, the senior

employe of the furlough list is called first. In the instant case, Rule 18 of the parties' Agreement is the controlling rule. Paragraph (c) provides:

> "When a bulletined new position or vacancy is not filled by an employe in service senior to a qualified furloughed employe who has protected his seniority, as provided in that rule, the senior qualified furloughed employe will be called to fill the-position.
>
> "Furloughed employes failing to return to service within seven (7) days after being notified (by registered or certified U. S. Mail or telegram sent to last address on file), or give satisfactory reason for not doing so, will forfeit all service and seniority rights."

It is obvious that the Carrier did not follow the recall provisions of the Agreement when forces were increased following the strike. Instead, Carrier called employes out of seniority order to work restored positions, even though such positions had been abolished and had not been bulletined. It is clear that Rule 18 was not followed, an obvious violation that the majority should 'nave recognized.

Instead of following Rule 18, the Carrier returned employes to service on their former jobs without regard to seniority. In doing this, Carrier either had to suffer the consequences of any seniority violations that occurred, e.g., pay the claims, or have a special agreement permitting variation from the rule. Gne such special agreement was the Strike Standby Agreement of April 9, 1964. This Carrier failed to follow, and now the majority have held that the Agreement was superseded, even though there is not one item of evidence to this point submitted in the record.

The purpose of entering into a strike standby agreement is to eliminate the tedious issuing of bulletins, often in serial order, and to achieve the resulting reduction in the movement of employes from position to position while the bulletining process is running its course. The quid pro quo is usually that all employes will be returned simultaneously to their former positions when the emergency is terminated. At the commencement of the UTU strike on July 15, 1971, the employes believed that the 1964 Strike Standby Agreement was in full force and effect; thus, Carrier breached that Agreement at the termination of the strike.' Assuring arguendo that the Agreement was not in effect, then Carrier breached the basic rules agreement when employes were recalled to work outside of seniority date. Both breaches were fully and completely discussed and were fully and completely laid out before Referee Twomey. And yet, rather than dealing with the breaches, he instead chcose to avoid his obligation and deal with the abolishments, an item never disputed.

Award 20614 is in palpable error and requires dissent.

J. C. FLETCHER
Labor Member

March 7, 1975