NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20648
THIRD DIVISION Docket Number 'XX-20674

Robert A. Franden, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(REA Express, Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7567) that:

(1) The Agreement governing hours of service and working conditions between the parties, effective January 1, 1967 and the supplements thereto effective December 14, 1968, was violated at Pittsburgh, Penna. when on Tuesday, October 24, 1972, Management refused to permit C. M. Salter, Rose Glasspool, C. J. Saniga, W. G. Avery, Effie Beeves and Edna Overcashier to work their regular assignments as set forth by bulletin, deleting their services entirely on this day in question.

(2) The six (6) named claimants shall now be compensated for eight (8) hours pay for Tuesday, October 24, 1972, at the daily rate of $32.90 for violation of their vested right to work their bulletin assignment in accordance with the prescribed rules.

OPINION OF BOAW: On October 20, 1972, a strike was initiated by the Organization against REA Express, Inc., hereinafter referred to as the Carrier. At 5:45 P.M. on October 23, 1972 an order was issued by the United States District for the Southern District of New York, which order reads in pertinent part as follows:

> "ORDERED, that until the hearing and determination on the motion for a preliminary injunction, unless this order be dissolved prior thereto, or extended thereafter, BRAC, its officers, agents, employees and members including all International and Local Officers, General and Local Chairmen, Organizers and Representatives, and all persons acting in concert or participation with them, be restrained and enjoined from, in any manner or by any means:
>
> 1. Authorizing, instigating, encouraging, inducing, approving, calling, conducting, carrying out by direct or indirect means, any strike, concerted refusal to report for work as recalled by REA or to accept duty assignments, or any other work stoppage, work slowdown or interference with REA's normal operations;

2. Advising the public, including REA's customers and communications media, that a strike of REA has been called or is imminent;

3. Picketing any of the premises on which REA conducts its express operations, including the entrances thereto and all other places where REA's business operations are carried on;

4. Interfering in any manner with ingress to or egress of any of the employees, customers of REA to and from any and all places of its business and the use of REA and its employees of REA's vehicles and facilities; and

5. Interfering in any manner with the performance by any of REA's employees of their work and duties; and it is further

ORDERED, that BBAC shall forthwith issue proper notices to the members, officers and agents of BRAC, and all others acting in concert with them, to effectuate the provisions of this order, publicly withdrawing and rescinding any orders, directions requests, or suggestions to do any of the acts specified in the immediately preceding ordering paragraphs hereof; and it is further"

The Claimants were instructed by the Carrier not to report to work their positions on October 24 due to a lack of work which resulted from the strike. The Organization alleges that the Claimants were denied their right to work on October 24 in contravention of their rights under the Agreement.

The Carrier maintains that its manner of recalling its employees was consistent with the Court order and hence not in violation of the Agreement.

The record contains a considerable discussion of Rule 3 (k). In that the Carrier did not avail itself of the force reduction rule (3 (k) with regard to these Claimants, a discussion as to its application is not warranted. The question of when an emergency ends would be relevant in this case only if said rule were invoked.

The question we are to decide is what is the effect of the temporary restraining order set out above. A temporary restraining order is used to maintain the status quo pending a decision on the merits of the case. In the instant matter that meant the maintenance of a strike free operation. The District Court ended the work stoppage by restraining BRAC from engaging in certain acts.

The Carrier would have us believe that the language of paragraph one (1) of the temporary restraining order "as recalled by REA" was intended to extend the time frame within which the employees could be put back to work. We do not believe this is a proper interpretation of the wording. When a strike is enjoined there will be a recall to work. At the time of the recall, the Organization is restrained from interferring with the employees returning to work. To make that statement in the order is not to alter the rights of the Carrier or the Organization under the basic Agreement between the parties. Once the strike is ended, it is the rules of the Agreement that determine the rights of the employees. The right of the employees to work their positions are protected by those rules. Absent the exercise of the force reduction rule, the Carrier had no right to bar the Claimants from working their positions.

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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

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