NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25876
THIRD DIVISION Docket Number CL-26017

Charlotte Gold, Referee

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-9948 that:

1. Carrier violated the Clerks' Agreement when it failed and refused employment and compensation to employes assigned Store Department, Palestine, Texas.

2. Carrier shall now be required to compensate each of the following seven (7) claimants eight (8) hours at the pro rata rate of their regular assignments each day September 23 and 24, 1982.

Name of Claimant	Position Assigned Palestine Store Dept.
Peter Word	General Foreman No. 200
J. R. Hudson	Material Handler No. 706
C. W. Rush	Material Handler No. 703
C. A. Lingo	Material Handler No. 704
W. A. Richmond	Material Clerk No. 102
M. G. Rhyne	Material Clerk No. 103
S. L. Main	Material Clerk No. 702"

OPINION OF BOARD: The seven Claimants in this dispute were regularly assigned employes in Carrier's Materials Department at Palestine, Texas. Following a strike by the Brotherhood of Locomotive Engineers on Sunday, September 19, 1982, Carrier posted an announcement indicating that the Palestine Materials Department and Scrap Yard would be closed until further notice.

On Wednesday, September 22, 1982, Congress passed a Joint Resolution requiring the BLE to return to service and the status quo in effect when the strike began. The Mechanical Department determined that the Materials Department was not needed on Thursday and Friday and that production would resume on Monday, September 27, 1982. Claimants were told of this decision by telephone on September 22 and a notice was posted at the facility on September 23.

As a consequence of this act, the Organization contended that Carrier violated Rule 27 of the current Agreement by shutting down and refusing work to Claimants because of a grievance with another craft. Rule 27 reads in pertinent part:

"RULE 27

Basis of Pay

(b) Nothing herein shall be construed to permit the reduction of days below five per week, except that this number may be reduced in a week in which holidays occur by the number of such holidays, and no reduction in the number of days below five per week shall be made except by Agreement between the Management and General Chairman, or when reducing forces or abolishing positions in accordance with Rule 14."

Carrier, on the other hand, cited paragraph (d) of Rule 14 of the Agreement as its authority:

"RULE 14

Reducing Force, Abolishing Positions, Displacements and Furloughs

(d) 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 employes."

For Carrier, the basic question is whether it was required to put Claimants back to work immediately upon the passage of the Joint Resolution ending the BLE strike or when operations were restored and their employment was once again needed. Carrier argues that it did not act in bad faith or seek to avoid its responsiblity. It took a brief period of time for business to "snap back" and, as it did, Claimants were returned to work.

The Organization maintains that while Rule 14(d) was applicable when the strike began, it was not when the cooling off period went into effect on Wednesday, September 22. When the emergency ended, so too did the emergency provision of Rule 14(d). Carrier, according to the Organization, had no unilateral right to abolish positions by telephone on that day. A telephone call does not meet the requirement of five days' notice for the abolishment of a position contained in Rule 14(b).

The issue in dispute here comes down to the following question: Does Carrier have the right to operate under the provisions of Rule 14(d) until the impact of the strike is over or does Rule 14(d) only apply up to the point when the strike itself is concluded (in this case, by act of Congress)? Upon a complete review of the record, the Board finds Carrier's position to be the more persuasive.

As the Carrier notes, this Board has in the past concluded that so long as a Carrier has acted in good faith, it may continue to shut down an operation until the impact of a labor dispute has ended. See, Award No. 20614 ("The parties to the . . . 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"), as well as Second Division Awards Nos. 6411, 6412, and 6513. The Organization quite rightfully points out that, placed in the wrong hands, the right to operate under emergency conditions until the impact of a strike is no longer felt may be misused. Each case, however, must be judged on its own merits and in the present instance, we find that Carrier did act in good faith and not out of an effort to frustrate the intent of the parties' 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1986.