Award No. 2865
Docket No. MW-2862

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS LINES

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

1. That the Carrier violated agreement in effect particularly Memorandum of Agreement dated December 15, 1942, by its failure to return B. & B. gang in charge of Foreman G. T. Choate to its regular headquarters at Atoka, Oklahoma when it had completed the emergency work at or near Eufaula, Oklahoma;

2. That the Carrier violated agreement in effect and ordinary ethics by denying B. & B. mechanics W. H. Studdard, H. E. Dyer, Theodore Cook, F. A. Jumper, W. F. Hohenstein, and J. R. Choate the right to return to service on June 13, 1943 after these men had on June 3, 1943 been granted temporary leave from the service or layoff by District Engineer A. B. Underwood, pending return to service of B. & B. Foreman G. T. Choate who was ill;

3. That W. H. Studdard, H. E. Dyer, Theodore Cook, F. A. Jumper, W. F. Hohenstein, and J. B. Choate shall be restored to the service at their regular headquarters at Atoka, Oklahoma, with seniority rights unimpaired and paid for all time lost at their respective hourly rates of pay, retroactive to June 14, 1943.

OPINION OF BOARD: The principal issue for determination here is whether employes quit their jobs on June 3, 1943 as claimed by Carrier, or whether they were given permission to lay off temporarily, pending return of the foreman, as asserted by employes. This is a fact question and the evidence on this issue is in irreconcilable conflict. After a careful study of the record, we reach the conclusion that employes terminated their services with Carrier on June 3rd and that the evidence is not sufficient to establish employes' contention that they were granted a temporary lay-off.

In determining this issue, we cannot consider whether employes had a proper grievance in being required to board with Foreman Burnett. If they had such a grievance, their remedy was by asserting it in accordance with the Agreement, and not by suspending work.

Article 20 (g) provides:

> "Prior to the assertion of grievances as herein provided, and while questions of grievances are pending, there will be neither a shut down by the employer or suspension of work by the employes."

The record shows that on June 3rd at 12:50 P. M. employes told Burnett that they would not work for him any longer, and that they did not work that afternoon or any time thereafter. This was tantamount to a quitting of their jobs.

Employes insist, however, that District Engineer Underwood granted them a temporary lay-off on the evening of June 3rd. Sworn statements were submitted by five employes stating that they heard Underwood say that they could go back to work when the foreman of the crew to which they were assigned, returned to work. Underwood denies making such a statement and asserts that he told the men if they did not go back to work for Burnett they were through. It is argued in behalf of employes that had these men understood that they were through on June 3rd, they would have demanded an immediate hearing. It seems to us it is more reasonable to suppose that the reason they did not demand an immediate hearing is because they quit their jobs, and knew they were not entitled to one.

Moreover it is difficult to reconcile the fact that after these men refused to work for Burnett and after they abandoned their jobs when the demand for help was still acute on account of the emergency, that the Engineer should say in substance "That's all right boys, we'll grant you a lay-off and you can go back to work when Choate the foreman returns." Human nature does not ordinarily react in that manner.

The discussion with Underwood in the evening of June 3rd is not inconsistent with holding that these men quite their jobs at noon. Even though they had quit, there was nothing unusual about Underwood endeavoring to persuade them to return and iron out their grievances later.

It being undisputed that employes quit their jobs at 12:45 P. M. on June 3rd, to sustain their claim they have the burden of proving that Carrier agreed to the lay-off. That burden has not been sustained. By so holding, we are not suggesting that these men falsified. We are simply stating that there are sufficient circumstances in the record as hereinbefore outlined that throw such doubt upon the question whether lay-offs were granted that the Board is not convinced that employes were given the right to return to their jobs.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 herin; and

That employes quit their jobs on June 3, 1943, and have not sustained the burden of proof that they were granted permission to return to their jobs.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of March, 1945.