

Award No. 3701

Docket No. TE-3668

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**SOUTHERN PACIFIC LINES IN TEXAS & LOUISIANA,
TEXAS AND NEW ORLEANS RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans Railroad Company),

(1) That the Carrier violated Article 1 (Section 1), Article 1 (Section 5), Article III (Section 1), Article II (Section 2), of the then existing telegraphers' agreement, and Notice and Order No. 1 and Notice of Instructions of Federal Manager C. H. Buford of Government Controlled Railroads of May 17, 1946, when, effective May 25, 1946, the Carrier declared abolished the positions of the claimants named in the following Employees' Statement of Facts and on the days specified therein, because of the strike of the engineers and trainmen commencing on May 24, 1946, and has refused to pay these claimant employees their wages for the day or days on which they were improperly locked out and suspended from work during their regular hours; and

(2) That each of the claimant employees named in the Employees' Statement of Facts who were thus improperly deprived of their usual employment by the Carrier on the day or days specified by being improperly locked out and suspended during their regular hours and who were ready for service and not used, shall be reimbursed for the wage loss on the day or days specified as a result of this improper act of the Carrier.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date April 1, 1938, as to rates of pay and rules of working conditions was in effect between the Carrier and The Order of Railroad Telegraphers for the period covered by this dispute.

Due to a threatened strike of the engineers and trainmen on the Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans Railroad Company) the United States took possession, control and operation of the Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans Railroad Company) effective 4:00 o'clock P. M., May 17, 1946 by means of the following quoted Notice and Order No. 1:—

NOTICE AND ORDER NO. 1

To each carrier by railroad named in the Executive Order of the President of the United States, dated May 17, 1946, concerning possession, control, and operation of certain railroads:

the work theretofore performed by the claimants who held the positions which were abolished. The Carrier did not have in mind any temporary suspension of work or any short term force reduction. There was no way the Management of this Carrier or anyone else except the Chief Executives of the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Engineers could tell how long the strike was to remain in effect, whether it would be two days, two weeks, two months, or longer. The declared intentions of the leaders of the strike movement were to remain on strike indefinitely, hence it was incumbent upon the Management of this Carrier to arrange the affairs of the Company as economically as possible and in full compliance with its contracts and agreements with Organizations representing other employees whose employment was affected by the tie-up of the railroad. Some agreements required a period of notice, twenty-four hours or forty-eight hours, but the ORT Agreement does not contain any such period of advance notice and the Carrier was very careful to strictly observe each agreement to the letter and did in this case comply very carefully with every rule in the ORT Agreement in abolishing offices and reducing forces and likewise complied with the agreement when the strike was suddenly called off. As evidence of the Carrier's compliance, there has not been one claim or protest by any individual or from any representative of the Organization that any man covered by the ORT Agreement was mishandled in re-establishing the positions and assigning employees.

Every effort has been made to set out all known, relevant, argumentative facts, and the Carrier respectfully requests an opportunity to reply to the Employees' submission in this case and to appear for oral hearing before the Board and thereafter an opportunity of making such answer to argument that may be made by Representatives of the Order of Railroad Telegraphers at the hearing.

In conclusion, the Carrier respectfully requests that the claims for the thirty (30) individuals listed herein, which list was furnished by the General Chairman of the ORT, and all of the contentions by the Organization in this case be denied.

OPINION OF BOARD: Properly to understand and evaluate the facts in this case, they must be placed in the setting of their time.

A description of events in a larger dispute, of which the dispute before us is an aftermath, up until May 17, 1946, was released that day at the White House, along with a statement by the President and the text of an Executive Order seizing all the principal railroads of the country, including the Carrier, and ordering the Director of the Office of Defense Transportation to operate them. We quote all three:

I.

"HISTORY OF THE CASE"

A request for wage increases and 44 rules changes was made by the five operating unions. The carriers on July 24, 1945, made a counter proposal calling for 29 rules changes. At about the same time proposals and counter proposals were made by 15 non-operating unions and the carriers.

The Railway Labor Act provides for negotiation, mediation and voluntary arbitration, or if arbitration cannot be agreed upon, Emergency Fact Finding Boards or Panels may be selected to hear and make recommendations as to the settlement of wage or rules issues.

In following the Railway Labor Act machinery, three of the operating unions and the 15 non-operating unions, representing 85 per cent of all the railroad employees, agreed to give wages first attention, thereby taking the rules out of the discussion until the wage requests were settled. These 18 organizations then agreed to arbitrate the wage question. The arbitration boards heard the wage case and awarded an increase of \$1.28 per day.

The Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen declined to separate the rules and wage requests, and upon failure to reach a settlement in mediation declined to arbitrate. They took a strike vote, thus creating a situation requiring the appointment of an Emergency Board under Section 10 of the Railway Labor Act. The Emergency Board heard the case and recommended a wage increase of \$1.28 per day and some rules changes. It remanded the other proposed rules changes to the parties for negotiations under a time schedule which would permit the completion of the job.

The Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen rejected the Emergency Board recommendation in its entirety.

Under Section 10 of the Railway Labor Act no change except by agreement may be made in conditions out of which a dispute arose until 30 days after the filing of an Emergency Board recommendation. The recommendation was filed April 18, 1946.

The union executive officers of the Engineers and Trainmen set 4 P. M., May 18, 1946, as the date for striking unless a settlement satisfactory to them should be reached prior to that time.

The order providing for the taking over of the roads by the Government contains guaranties of preservation of existing wage rates and working conditions except as they may be changed by agreement in accordance with the provisions of the Railway Labor Act.

II

STATEMENT BY THE PRESIDENT

I have today by Executive Order directed J. Monroe Johnson, Director of the Office of Defense Transportation, to take over the country's railroads and operate them in the name of the United States Government.

A strike has been called for 4 P. M. tomorrow by two of the twenty railroad labor organizations—the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen. These two have declined to accept the findings and recommendations of an Emergency Board created by the President under the Railway Labor Act. In the strike situation thus confronting us, governmental seizure is imperative for the protection of the rights of our citizens.

It is essential to the public health and to the public welfare generally that every possible step be taken by the government to 'assure to the fullest possible extent continuous and uninterrupted transportation service.'

I call upon every employee of the railroads to cooperate with the government to this end by remaining on duty.

I have asked the parties involved to continue negotiations with the view to reaching an agreement whereby the railroads can be returned to private ownership at the earliest possible date.

III

EXECUTIVE ORDER

POSSESSION, CONTROL, AND OPERATION OF CERTAIN RAILROADS

WHEREAS after investigation I find and proclaim that as a result of labor disturbances there are interruptions, or threatened

interruptions, of the operations of the transportation systems, plants, and facilities owned or operated by carriers by railroad named in the list attached hereto and made a part hereof; that the war effort will be unduly impeded and delayed by such interruptions; that it has become necessary to take possession and assume control of the said transportation systems, plants, and facilities for purposes that are needful or desirable in connection with the present wartime emergency; and that the exercise, as hereinafter specified, of the powers vested in me is necessary to insure in the national interest the operation of the said transportation systems, plants, and facilities:

NOW, THEREFORE, by virtue of the power and authority vested in me by the Constitution and laws of the United States, including section 9 of the Selective Training and Service Act of 1940 as amended by section 3 of the War Labor Disputes Act (57 Stat. 164), the Act of August 29, 1916 (39 Stat. 619, 645), and the First War Powers Act, 1941 (55 Stat. 838), as President of the United States and Commander in Chief of the Army and Navy, it is hereby ordered as follows:

1. Possession and control of the transportation systems, plants, and facilities owned or operated by the carriers by railroad named in the list attached hereto and made a part hereof are hereby taken and assumed, through the Director of the Office of Defense Transportation (hereinafter referred to as the Director), as of four o'clock P. M., May 17, 1946; but such possession and control shall be limited to real and personal property and other assets used or useful in connection with the operation of the transportation systems of the said carriers. If and when the Director finds it necessary or appropriate to carry out the purposes of this order, he may, by appropriate order, take possession and assume control of all or any part of any transportation system of any other carrier by railroad located in the continental United States.

2. The Director is directed to operate, or arrange for the operation of, the transportation systems, plants, and facilities taken under or pursuant to this order in such manner as he deems necessary to assure to the fullest possible extent continuous and uninterrupted transportation service.

3. In carrying out the provisions of this order the Director may act through or with the aid of such public or private instrumentalities or persons as he may designate, and may delegate such of his authority as he may deem necessary or desirable, with power of successive redelegation. The Director may issue such general and special orders, rules and regulations as may be necessary or appropriate to carry out the provisions, and to accomplish the purposes, of this order. All Federal agencies shall comply with the directives of the Director issued pursuant to this order and shall cooperate to the fullest extent of their authority with the Director in carrying out the provisions of this order.

4. The Director shall permit the management of carriers whose transportation systems, plants, and facilities have been taken under, or which may be taken pursuant to, the provisions of this order to continue their respective managerial functions to the maximum degree possible consistent with the purposes of this order. Except so far as the Director shall from time to time otherwise provide by appropriate order or regulation, the boards of directors, trustees, receivers, officers, and employees of such carriers shall continue the operation of said transportation systems, plants, and facilities, including the collection and disbursement of funds thereof, in the usual and ordinary course of the business of the carriers, in the names of their respective companies, and by means of any agencies, associations, or other instrumentalities now utilized by the carriers.

5. Except so far as the Director shall from time to time otherwise determine and provide by appropriate orders or regulations, existing contracts and agreements to which carriers whose transportation systems, plans, and facilities have been taken under, or which may be taken pursuant to, the provisions of this order are parties, shall remain in full force and effect. Nothing in this order shall have the effect of suspending or releasing any obligation owed to any carrier affected hereby, and all payments shall be made by the persons obligated to the carrier to which they are or may become due. Except as the Director may otherwise direct, there may be made, in due course, payments of dividends on stock, and of principal, interest, sinking funds, and all other distributions upon bonds, debentures, and other obligations; and expenditures may be made for other ordinary corporate purposes.

6. Subject to applicable provisions of existing law, including the orders of the Office of Defense Transportation issued pursuant to Executive Order 8989, as amended, the said transportation systems, plants, and facilities shall be managed and operated under the terms and conditions of employment in effect at the time possession is taken under this order. The Director shall recognize the right of the workers to continue their membership in labor organizations, to bargain collectively through representatives of their own choosing with the representatives of the owners of the carriers, subject to the provisions of applicable statutes and Executive Orders, as to matters pertaining to wages to be paid or conditions to prevail after termination of possession and control under this order; and to engage in concerted activities for the purpose of such collective bargaining or for other mutual aid or protection, provided that in his opinion such concerted activities do not interfere with the operation of the transportation systems, plants, and facilities taken hereunder, or which may be taken pursuant hereto.

7. Except as this order otherwise provides and except as the Director may otherwise direct, the operation of the transportation systems, plants, and facilities taken hereunder, or which may be taken pursuant hereto, shall be in conformity with the Interstate Commerce Act, as amended, the Railway Labor Act, as amended, the Safety Appliance Acts, the Employers' Liability Acts, and other applicable Federal and State laws, Executive Orders, local ordinances, and rules and regulations issued pursuant to such laws, Executive Orders, and ordinances.

8. Except with the prior written consent of the Director, no receivership, reorganization, or similar proceeding affecting any carrier whose transportation system, plants, and facilities are taken hereunder, or which may be taken pursuant hereto, shall be instituted, and no attachment by mesne process, garnishment, execution, or otherwise shall be levied on or against any of the real or personal property or other assets of any such carrier, provided that nothing herein shall prevent or require approval by the Director of any action authorized or required by any interlocutory or final decree of any United States court in reorganization proceedings now pending under the Bankruptcy Act or in any equity receivership cases now pending.

9. For the purposes of paragraphs 1 to 8, inclusive, of this order, there are hereby transferred to the Director the functions, powers, and duties vested in the Secretary of War by that part of Section 1 of the said Act of August 29, 1916, reading as follows:

'The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion as far as may be necessary of all other traffic thereon, for

the transfer or transportation of troops, war material and equipment, or for such other purposes connected with the emergency as may be needful or desirable.'

10. The Director may request the Secretary of War to furnish protection for persons employed or seeking employment in the plants, facilities, or transportation systems of which possession is taken hereunder, or which may be taken pursuant hereto, to furnish protection for such plants, facilities, and transportation systems, and to furnish equipment, manpower, and other facilities or services deemed necessary by the Director to carry out the provisions, and to accomplish the purposes, of this order. The Secretary of War is authorized and directed, upon such request, to take such action as he deems necessary to furnish such protection, equipment, manpower, or other facilities or services.

11. From and after four o'clock P.M., on the said 17th day of May, 1946, all properties taken under this order shall be conclusively deemed to be within the possession and control of the United States without further act or notice.

12. Possession, control, and operation of any plant or facility, or of any transportation system, or any part thereof, or of any real or personal property taken under this order, or which may be taken pursuant hereto, shall be terminated by the Director when he determines that such possession, control, and operation are no longer necessary to carry out the provisions, and to accomplish the purposes, of this order.

HARRY S. TRUMAN

THE WHITE HOUSE

May 17, 1946"

The same day that the above quoted documents were issued, Colonel J. M. Johnson, Director of the Office of Defense Transportation, appointed Charles H. Buford as "Federal Manager of Government Controlled Railways". Mr. Buford almost immediately issued to the railroads "Notice and Order No. 1" which we quote:

"NOTICE AND ORDER NO. 1

To each carrier by railroad named in the Executive Order of the President of the United States, dated May 17, 1946, concerning possession, control, and operation of certain railroads:

1. By order of the director of the Office of Defense Transportation, dated May 17, 1946, the authority vested in said director by Executive Order of the President of the United States, dated May 17, 1946, whereby possession and control of your transportation system, plants, and facilities are taken and assumed by the United States as of 4:00 o'clock p.m., May 17, 1946, has been duly delegated by said director to the undersigned as Federal Manager of Government Controlled Railroads.

2. Until further order, you are hereby directed to continue operations in the usual and ordinary manner and course of business as a going enterprise, in your own name, and by means of the instrumentalities, agents, officers, and employees customarily employed by you, as fully as if possession and control had not been taken and assumed by the United States, subject, however, to the terms of said executive order, and to all general and special orders, rules, and regulations which may be issued thereunder. Title to the properties and other assets of which possession has been taken remains in the owners thereof. Possession by the United States is not exclusive and the United States asserts, and will assert, only such control over the properties in its limited possession as may be necessary to accomplish the purposes of the executive order.

3. All personnel, officers, agents, and employees, employed by you in the operation of your transportation system, plants, and facilities, are called upon to resume or continue the performance of their usual duties and in the customary manner until otherwise ordered. No such officer, agent, or employee shall be deemed to be an official or employee of the United States.

4. Subject to the terms of the executive order, wage scales and working conditions in effect on the effective date of the executive order shall be maintained and full recognition shall be given to the rights of the employees and all classes thereof. All deductions for the benefit of employees now being made by law or agreement, including insurance payments, railroad retirement and unemployment compensation deductions, and other deductions of every kind, and all arrangements governing the payment of wages, including bond purchase plans, shall be continued, subject to any legal right of discontinuance.

5. Subject to the terms of the executive order, the operation of the carrier shall be in conformity with the Interstate Commerce Act, as amended, the Railway Labor Act, as amended, the Safety Appliance Acts, and Employers' Liability Acts, and other applicable federal and state laws, executive orders, local ordinances, and rules and regulations issued pursuant to such laws, executive orders, and ordinances.

6. The accounts of the carrier will continue to be kept in the customary manner. The carrier will assume full financial responsibility for the operation of its properties; will retain all income or proceeds resulting from such operations; and will pay all expenses incurred by the carrier in connection with such operations.

7. Until further order, carriers will remain subject to suit as heretofore and to the levy of attachments by mesne process, garnishment execution or otherwise, on or against the properties or other assets of such carriers, but no receivership, reorganization, or similar proceedings affecting any carrier whose transportation system, plants, and facilities are or may be taken under the executive order shall be instituted without the prior written consent of said director. Nothing herein shall be deemed to require approval of any action authorized or required by any interlocutory or final decree of any United States Court in reorganization proceedings now pending under the Bankruptcy Act or any equity receivership cases now pending.

8. Any carrier which objects to assuming responsibility for any action which it is required to take pursuant to this order, or to any other order, rule, regulation, or direction issued by the director of the Office of Defense Transportation, the federal manager of government controlled railroads, or by any duly authorized representative of the director or the federal manager, shall protest such order, rule, regulation, or direction, to the federal manager, in writing. . . .

9. A copy of said executive order and a copy of this notice and order shall be posted by each carrier on each bulletin board maintained by the carrier at its principal offices, division and section headquarters, stations, depots, shops and yards."

Mr. Buford also sent out to all executives and employers the following notice:

"NOTICE

To all Executives and Employees:

Effective at 4:00 o'clock P. M., May 17, 1946, the transportation system, plants and facilities of the Texas and New Orleans

Railroad Company are in the possession and control of the United States by Executive Order of the President dated May 17, 1946. The Government expects all persons employed by the Company to fully and faithfully discharge their duties as such employees on all occasions and to refrain from taking any action which might lead to the curtailment or suspension of service vitally needed at this time. Provision is made in the President's order for furnishing protection for employees if such protection is needed.

/s/ Charles H. Buford
Federal Manager of Government Owned Railroads."

At about the same time, Mr. Buford's chief, Col. Johnson, sent the following notice to the heads of all organizations representing railroad employees of which this is a sample:

"AA36—XVA.WA741 13 Govt 1 Extra—Washington DC 17

533 PM

1946 May 17 PM 4:43

Rapid V. O. Gardner, Pres.,
Order of Railroad Telegraphers
3673 West Pine Blvd. StL.

The President having decided that the railroads are to be operated in the possession and control of the Government I will appreciate your cooperation in preserving and continuing rail service.

/s/ J. M. Johnson, Director
Office of Defense Transportation."

Seizure of the railroads led Messrs. Johnson and Whitney of the Engineers and Trainmen, respectively, to postpone their strike, and the country breathed more easily. The general public undoubtedly felt that railroad men had no right to paralyze the nation's economy in the midst of its conversion from war to peacetime purposes: that railroad employees must seek means other than leaving their jobs for settling their disputes.

Negotiations continued, under the aegis of government officials, including the President himself. But they proved to be fruitless. Defying both the law and public opinion, Messrs. Whitney and Johnston again called a strike, effective as of 4:00 P. M., May 23.

The railroads ground toward a complete standstill after the appointed hour. By nightfall, practically no trains were running. Negotiations in Washington continued, however, incessantly. The press and public clamored for speedy action. **Everyone knew that the Government could not, and would not, tolerate the continuation of this paralyzing walk-out for long.**

President Truman that night (May 24) gave voice to that sentiment in a radio talk to the country. We quote its last paragraphs:

"I am a friend of labor. You men of labor who are familiar with my record in the United States Senate know that I have been a consistent advocate of the rights of labor and of the improvement of labor's position. I have opposed and will continue to oppose unfair restrictions upon the activities of labor organizations and upon the right of employees to organize and bargain collectively. It has been the basic philosophy of my political career to advocate those measures that result in the greatest good for the greatest number of our people. I shall always be a friend of labor.

But in any conflict that arises between one particular group, no matter who they may be, and the country as a whole, the welfare of the country must come first. It is inconceivable that in our democracy any two men should be placed in a position where they can completely stifle our economy and ultimately destroy our coun-

try. The Government is challenged as seldom before in our history. It must meet the challenge or confess its impotence.

I would regret deeply if the act of the two leaders of these unions should create such a wave of ill will and a desire for vengeance that there should result ill-advised restrictive legislation that would cause labor to lose those gains which it has rightfully made during the years.

As President of the United States, I am the representative of 140 million people and I cannot stand idly by while they are being caused to suffer by reason of the action of these two men.

This is no contest between labor and management. This is a contest between a small group of men and their government. The railroads are now being operated by your government and the strike of these men is a strike against their government. The fact is that the action of this small group of men has resulted in millions of other workers losing their wages. The factories of our country are far behind in filling their orders. Our workers have good jobs at high wages but they cannot earn those wages because of the willful attitude of these few men. I cannot believe that any right of any worker in our country needs such a strike for its protection. I believe that it constitutes a fundamental attack upon the rights of Society and upon the welfare of our country. It is time for plain speaking. This strike with which we are now confronted touches not only the welfare of a class but vitally concerns the well-being and the very life of all our people.

The railroads must resume operation. In view of the extraordinary emergency which exists, as President of the United States, I call upon the men who are now out on strike to return to their jobs and to operate our railroads. To each man now out on strike I say that the duty to your country goes beyond any desire for personal gain.

If sufficient workers to operate the trains have not returned by 4 p.m. tomorrow, as head of your government I have no alternative but to operate the trains by using every means within my power. I shall call upon the Army to assist the Office of Defense Transportation in operating the trains and I shall ask our armed forces to furnish protection to every man who heeds the call of his country in this hour of need.

This emergency is so acute and the issue is so vital that I have requested the Congress to be in session tomorrow at 4 p.m. and I shall appear before a joint session of the Congress to deliver a message on this subject."

Meantime, the railroads had inquired of Mr. Buford as to whether Order No. 1 required them to guarantee employment to all employees who were willing to work. At 1:24 P. M. on May 24 he sent a wire to the railroads (including the Carrier) which said in part: "In order to clear up the matter, please be advised that such instructions do not require you to retain employees in service for whom you have no work. In reducing forces, existing agreements should be followed."

When Messrs. Whitney and Johnson the afternoon of May 25 had still failed to come to terms with the railroads, President Truman left for the Capitol to ask Congress for the drastic legislation necessary to move the trains. While he was en route Messrs. Whitney and Johnson capitulated; word of the settlement reached the President after he had started to talk. Train movements were resumed at 4:00 P. M., or shortly thereafter.

Careful reading of the documents quoted above and the vivid memory of public sentiment at the time of the strike leads us to several conclusions which are important to the consideration of the case before us:

(1) That the public, through its government, had seized and was operating the railroads in an effort to insure continuous movement of trains.

(2) That the public felt no effort should be spared to prevent the strike, and, once it had started, to bring it to a speedy conclusion. In implementing the public will, the President (and Colonel Johnson) had urged all railroad employees to stay on the job and, once the strike had started, had commended those who had remained at their posts.

(3) That Mr. Buford, in approving force reductions in event of no work, must have meant, in the light of the above conclusions, that force reductions would be in order (and probably necessary) if the strike was prolonged. Since both his immediate chief and the President of the United States have urged everyone to stay on the job, he scarcely could have meant that lay-offs were in order the moment the strike started.

With these facts and conclusions serving as a back drop, we can proceed to consideration of the case at hand.

The Carrier, apparently starting on May 23 (before Mr. Buford's telegram had been received) and continuing into May 24 (the record is cloudy as to the exact time) sent the following notice to the claimants:

"Due to strike and curtailment of service incident thereto, your position is abolished effective at the end of tour of duty today."

Starting May 26, the day after termination of the strike, the claimants were restored to their positions. A few did not get back to work until May 27.

The Organization claims violation of various clauses of its agreement which protect employment (*v. claim*) and also the violation of the Federal Manager's Order No. 1. The Carrier relies partially on Article XXXI of the Agreement which says, in part:

" . . . if commercial or other conditions change materially, the Company reserves the right to abolish an office, or reduce the force without notice to conform to such modified conditions. . . ."

The Carrier counters the charge of Order 1 violation by citing the Buford telegram relating to force reductions. (*v. supra.*)

This Board is without authority to decide whether the Carrier violated the Federal Manager's Order Number 1. This Board is confined by law to the settlement of disputes arising out of the interpretation of agreements. Award 3691. Our long recital of events preceding, surrounding and immediately following the origin of this dispute was given for two purposes:

(1) To show that the Federal Government, operating the railroads at the time, had no intention that its agents, the Carriers, should, under their agreements or otherwise, hastily dismiss those employees who had stayed at their posts when the strike started.

(2) To show that neither the general public nor the government nor the railroads (including the Carrier before us) expected the strike to last long.

The latter point in itself is sufficient ground for us to find that the Carrier violated the collective intent of the Agreement sections cited by the Organization. Awards 3655, 3661, 3680.

The Carrier maintains, however, that Article XXXI quoted in part *supra*, gives it authority in such cases which it might not otherwise have. We agree, to the extent that the Organization cannot challenge precipitate abolition of jobs or reduction of force under certain circumstances. However, the abolition of jobs must be bona fide under any circumstances to meet the requirements of the Agreement. We do not believe the abolition

of the jobs we have before us were bona fide; it was merely a lay-off which the Carrier knew would be of short duration.

We are strengthened in this opinion by the fact that one employe attempted to exercise his seniority, as he was entitled to do in the event of his position being abolished bona fide. The Carrier refused his request and told him to disregard the notice that his position had been abolished. (This was after operation had been resumed.)

We will, therefore, find that the Carrier violated the Agreement, to the extent indicated in this opinion, and sustain the claims.

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 herein; and

That the Carrier violated the Agreement as indicated in the Opinion.

AWARD

Claims sustained, to the extent of requiring the Carrier to reimburse the specified employes for wage loss on those days when they were improperly laid off.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of November, 1947.