Award No. 3841
Docket No. CL-3859

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE LAKE TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerks' Agreement at Lorain, Ohio, when on May 24, 1946, the Carrier arbitrarily laid in employe Paul Kauffman, and

That the Carrier shall now compensate employe Paul Kauffman for one day's pay at the regular rate of his position.

EMPLOYES' STATEMENT OF FACTS: On the afternoon of May 23, 1946, sometime after 5:00 P. M., employe Paul Kauffman was notified by Mr. H. B. Phillips, Assistant Superintendent, Car Service, Lake Terminal Railroad Company that there would be no work for him on May 24, 1946.

Paul Kauffman is the regularly assigned incumbent of the first trick position of Weighmaster at No. 5 Scales, Lorain, Ohio. In anticipation of the railroad strike schedule for May 24th, Paul Kauffman was notified that there would be no work for him on May 24th resulting in his losing one day's pay on that date.

POSITION OF EMPLOYES: There is in effect between the parties an agreement bearing an effective date of February 1, 1945, which contains the following rules:

Rule 11 (Guarantee and Basis of Pay which reads as follows:

"(a) Nothing within this agreement shall be construed to permit the reduction of days for regularly assigned employes covered by this agreement below six (6) per week, except that this number may be reduced in a week in which holidays occur, by such holidays and except that nothing in this paragraph shall be construed to prevent the Company from reducing forces whenever necessary under the provisions of Rule 30.

"(b) Employes included in the Scope, Rule 1, shall be paid on a monthly or daily basis.

"To determine the daily rate for monthly rated employes, multiply the monthly rate by twelve (12) and divide by three hundred and six (306).

"To determine the straight time hourly rate, divide the daily rate by eight (8)."

"(b) Employes entitled to displacement rights under this Rule may be granted leave of absence if they so request, as provided in Rule 33, without first exercising those rights, provided the request for the leave is made within five (5) days from the date displaced or positions are discontinued or transferred. During said leave or within five (5) days after its expiration, they may exercise their seniority rights under this Rule.

"(c) When a position is abolished as a result of conditions beyond the control of the Company and is reestablished within thirty (30) days, the last regularly assigned incumbent, if still in the service and desiring same, with advice that he is the said "last regularly assigned incumbent", shall be reassigned to the position without advertising. When an employe is reassigned to a position under this Paragraph, other employes who were displaced may return to their former positions, if they become vacant, in the same manner as provided in this Paragraph."

Rule 23 covering Promotions, Assignments and Displacements reads as follows:

"(a) Seniority rights of employes to vacancies or new positions, or to perform work covered by this Agreement, shall be governed by this Agreement.

"(b) Employes covered by this Agreement shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail."

The Company reduced the forces in that all Weighmaster positions were abolished because of the railroad strike. This was as a result of conditions beyond the control of the Company, in accordance with Rule 30 (c). Also, as stated by this rule, Mr. Kauffman was reassigned to his position the next day without advertising. We were prevented by conditions beyond our control in giving twenty-four (24) hours advance notice of the reduction in force.

In accordance with Rule 30 (a) Mr. Kauffman should have exercised his seniority rights. He apparently did not elect to do so, and the Company should not be penalized because he did not. Rule 21 reads as follows:

"One Seniority District covering all employes within the Scope of this Agreement is hereby established."

With the service Mr. Kauffman has he could have bid in another position covered by the Agreement.

For the reasons herein outlined, the carrier submits that the claim should be denied.

OPINION OF THE BOARD: There is little dispute on the facts in this docket. Paul Kauffman was employed in the position of Weighmaster at No. 5 scale. His assigned hours were from 7 A. M. to 3 P. M. The position was covered by agreement between the Carrier and the Organization herein.

On May 23, 1946, after Kauffman had completed his assignment for the day he was notified that his position had been abolished. No advance notice had been given of intention to abolish the position. His position and those of all weighmasters were abolished on account of a strike which had been called by the Engineers' and Trainmen's Organizations.

The Engineers and Trainmen went out on strike the next day or on May 24, 1946. The effect of the strike was to leave no work to be performed in the positions of Weighmaster on this Carrier.

It is the contention of the Organization that the loss of time occasioned by the act of the Carrier was a violation of the guarantee of Rule 11 (a) of the Agreement as follows:

> "(a) Nothing within this agreement shall be construed to permit the reduction of days for regularly assigned employes covered by this agreement below six (6) per week. ....."

It may be well to state here that the effect of the action of the Carrier in the respect under inquiry did have the effect of reducing the days of this assigned employe to this position below six days for the week involved.

The Carrier on the other hand insists that what was done was proper under the full provisions of Rule 11(a) and the provisions of Rule 30(a) in the light of the known conditions.

The Rule provisions which the Carrier insists are from Rule 11(a):

> "(a) Nothing within this agreement shall be construed to permit the reduction of days for regularly assigned employes covered by this agreement below six (6) per week . . . except that nothing in this paragraph shall be construed to prevent the company from reducing forces whenever necessary under the provisions of Rule 30."

From Rule 30:

> "(a) . . . Except when prevented by conditions beyond the control of the Company, at least twenty-four (24) hours' advance notice shall be given employes affected in reduction in force. . . . "

Since there was a strike the effect of which was to take away work of this assigned position, the Carrier substantially contends that it became entitled under these rules to reduce its force to that extent. It also contends that within the meaning of these Rules it was prevented from giving twenty-four (24) hours' advance notice of reduction in force, that is on account of conditions beyond its control.

A careful examination of the agreement discloses that, while the right of the Carrier to reduce forces in assigned positions is recognized, the conditions under which it may be done or the mechanics of doing it are not specified except in the particular that it may not be done without the giving of twenty-four (24) hours' notice, except under conditions beyond the control of the Carrier.

The solution of the problem here, in the light of this situation, appears to depend upon reasonable answers to a number of pertinent questions.

Did the situation with which the Carrier was confronted reasonably, under conditions which were known, and those it might with good reason anticipate justify this reduction in force? It would appear so. A strike had been called. As long as it continued there would be no work required on the assignment. The Carrier could not foretell the duration of the strike. Whatever our moral concepts may be under the circumstances concerning the discontinuance of employment of the Claimant, the fact is that to have retained him in his assignment would have entailed an economic and operating loss to the Carrier.

Did the Carrier have the right under the agreement to discontinue the assignment? The answer to this question is not without its difficulties but all things considered it appears that to it there must be an affirmative one. A purpose of the agreement is to guarantee employment for six days a week. Accompanying that purpose is the recognized right to reduce forces. The agreement does not specify when this may be done except as it may be said to be specified in the words, "whenever necessary" in Rule 11(a). Fairly it may be said that this right may not be exercised unreasonably, arbitrarily or capriciously, and necessity may not be relied upon unless necessity does in fact reasonably exist.

In the field of employer-employe relations, except in cases of contractural inhibition, it is a matter of common knowledge and general information that a commonly recognized reason for the discharge of employes is the fact that there is no work to be performed in assigned positions. It cannot be said that to follow this principle is to act unreasonably, arbitrarily or capriciously.

There being no inhibitory provision in the agreement covering this situation, for the reasons stated it appears that the Carrier had the right to abolish the position.

Did the Carrier have the right to abolish the position without giving the twenty-four (24) hour notice provided for in Rule 30(a)? It is clear that the conditions on which the Carrier acted were not within its control. It had no control over the call of the strike, its effective date or the duration of the strike. Apparently it acted promptly when the date for commencement of the strike became certain. Dereliction and delay in giving notice to the Claimant is not apparent. Conclusively there was no need for service in the position on May 24, 1946, and conclusively also no service would be required in it so long as the strike continued.

We conclude therefore that the condition of Rule 30(a) dispensing with the necessity of giving twenty-four (24) hour notice was applicable.

On the basis of a superficial examination the conclusions herein reached would appear to be in conflict with the opinions in Awards 3661 and 3723 but on careful analysis it becomes clear that this is not true.

The agreements involved in those awards recognize the right of the respective carriers to reduce forces as does the one here involved. They have a six-day guarantee as does the one here. However, unlike the one here they contain no provision which permits of reduction of force when necessary on twenty-four (24) hour notice and if the conditions are beyond the control of the Carrier without the giving of twenty-four (24) hour notice.

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 Employe involved in this dispute are respectively carrier and employe 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 claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1948.