Award No. 4170
Docket No. MW-4129

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**ATLANTA AND WEST POINT RAILROAD—
THE WESTERN RAILWAY OF ALABAMA**

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

(1) That Carrier violated the provisions of the current agreement when it laid off its Maintenance of Way forces on May 25, 1946, on account of a strike by other classes of employes;

(2) That all Employes affected be reimbursed eight (8) hours pay at their regular rates of pay because of this violation of the agreement.

EMPLOYES' STATEMENT OF FACTS: Effective Saturday, May 25, 1946, the Carrier temporarily laid off many of its Maintenance of Way Employes on account of a strike on this date by other classes of railroad employes.

The Employes involved were not paid for the time lost.

Effective Monday, May 27, 1946, these same employes were returned to their work on their regular positions.

The Agreement, effective December 16, 1944, between the parties to the dispute is by reference made a part of the Statement of Facts.

POSITION OF EMPLOYES: Rule 13(b) of the current agreement states as follows:

> "(b) Regularly established daily working hours will not be reduced below eight (8) hours per day, six (6) days per week, except that this number of days may be reduced in a week in which holidays occur by the number of such holidays. This Article may be modified at any time by agreement between the Management and representative of the employes, and does not apply to employes assigned, by agreement, to a less number of hours or days. Should Federal or State Laws establish less than forty-eight (48) hours at pro rata rate as a maximum work week, nothing in this Article shall prohibit the Railroad from reducing the established hours per week as outlined above to comply with such laws in order to avoid payment of penalty overtime.
>
> When due to inclement weather, interruptions occur to regularly established work periods preventing eight (8) hours work, only the hours between the beginning and release from duty, exclusive of the

(d) Employes now filling or promoted to official positions, shall retain all their rights and continue to accumulate seniority in the Districts from which promoted."

This rule does not prohibit the reduction of forces any time Carrier sees fit and requires no advance notice. It is clear and without ambiguity, and was not violated in this case.

Carrier's action in this case cannot be considered as precipitate. We had no knowledge of how long the strike would last. We made no advance preparation for layoffs, and as above stated, made no reductions until May 25th, and then only in line with existing agreements.

This claim is without merit and we respectfully request that it be declined.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim is that the Carrier violated the Agreement by laying off 12 out of 22 section crews on May 25, 1946, during the nation-wide strike of the Engineers and Trainmen.

The Organization contends that this constituted a violation of Rule 13(b) which provided:

"Regularly established daily working hours will not be reduced below eight (8) hours per day, six days per week except that this number of days may be reduced in a week in which holidays occur by the number of such holidays."

We have held in many awards that employes may not be laid off or suspended for part of a week without the Carrier being in violation of this type of a guaranty rule. Awards 3715, 3723, 3724, 3725 and 3757. We have said that this was true in some cases where the Carrier contended that it had abolished the positions in question, but where we found that the positions had not actually been abolished. Award 3680.

In the instant case the Carrier contends that it abolished the positions included in these twelve crews as a part of a force reduction program instituted May 24, 1946, on receipt of an interpretative telegram of instructions from Federal Manager Buford which telegram advised the Carrier that the former instructions he had given "do not require you to retain employes in service for whom you have no work"; and that in so abolishing these positions effective with the end of the work day, May 24, 1946, it was "acting upon" the above instructions from Federal Manager Buford.

It is clear that the telegram quoted above did not require the Carrier to reduce forces. It only explained that Buford's former instructions did not require the Carrier to retain employes in service for whom the Carrier had no work. The telegram then warned the Carrier that in reducing forces "existing agreements should be followed."

The Carrier states that in reducing forces "steps were initiated to dispense with their services, in line with their existing agreements." The record fails to disclose what steps were initiated to dispense with the services of these employes.

If steps had been initiated which indicated that the positions had been abolished, rather than merely suspended during the strike, it would be reasonable to expect the Carrier to inform us what those steps were and to furnish us some proof that the steps had actually been taken.

We have often held that positions once established by a Carrier may not in the absence of agreement therefor, be abolished unless the work of the positions ceases to exist. In this case, however, we find the Carrier insisting that it had the right to abolish positions "any time we see fit." The attitude,

action and argument of the Carrier in this case leads us to believe that the Carrier here does not comprehend the meaning of the term "abolish".

If these positions were abolished they ceased to exist at the close of the work day on May 24th. The strike was brought to an end in the afternoon of May 25th. However the Carrier states that on May 27th, the employes "were returned to the positions formerly occupied," and again, "when the strike was settled on May 25th the jobs were restored and the men who had occupied them were permitted to return to same on the 27th."

If the positions had been abolished they could only be brought back into existence as new positions. Rule 5(a) of the Agreement requires that all new positions, above the rank of laborer, which are expected to be of more than thirty (30) calendar days duration, shall be bulletined. This is an essential to the establishment of such new positions. The positions here in question included foremen as well as laborers. None of the positions was bulletined. The Carrier attempts to explain its failure to bulletin by saying that it was believed that "it would be more beneficial to the men to return them to the positions formerly occupied."

Rule 9(a) provides:

> "In reducing forces, seniority shall govern. Employes affected may displace employes their junior, in any class in which they hold seniority."

The Carrier states that if the strike had continued "the senior men would have been permitted to place themselves according to seniority." If the positions had been actually abolished the senior employes under this Rule were entitled to immediately displace junior employes.

In view of the fact that the work of these positions did not cease when the trains stopped running; that work of this type could be more advantageously done while the trains were not running; and that all of these men were promptly returned to their positions as soon as the strike ended, we can only find that the work of these positions did not cease for the one day during which the Carrier says the positions were abolished.

We must, therefore, here find, as we did in Award No. 3680, that the positions were not actually abolished but that the employes were simply suspended for the one day.

Rule 13(b) prohibits the Carrier from doing this.

Our attention is particularly called to Award 3841 as supporting the position of the Carrier here. In that case the guaranty rule expressly provided that it should not "be construed to prevent the Company from reducing forces whenever necessary."

We are also cited to Awards 3838, 4001 and 4099. In the first two of those Awards the Carrier was sustained in **actually** abolishing positions where the work of the positions had ceased. In Award 4099 this Division held that the Carrier violated the guaranty rule there involved by affecting the abolishment of positions after the cause therefor had ceased with the ending of the strike.

None of these awards is applicable to this case.

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 claimed.

AWARD

Claims (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of November, 1948.