Award No. 4455
Docket No. TE-4408

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
(Line West)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The New York Central Railroad Company, Line West of Buffalo:

(1) That the Carrier violated Articles 2, 9, and 12 of the 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 on May 24, 25, and 26, 1946, the Carrier declared "closed" the positions of the claimants named in the following Employes' Statement of Facts on the days specified therein, and all other employes under the Telegraphers' Agreement whose positions were likewise declared "closed" because of the Engineers' and Trainmen's strike commencing May 24, 1946, and has refused to pay these claimants their wages for the day or days on which they were thus improperly suspended from work during their regular hours; and

(2) That each of the claimants named in the Employes' Statement of Facts and all other employes under the Telegraphers' Agreement who were thus improperly deprived of their usual employment by the Carrier on the day or days involved by being improperly 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 involved as a result of this improper act of the carrier.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement between the parties bearing effective date of May 22, 1946 as to rules of working conditions, copy of which is on file with the Board and by reference is made a part of this Statement of Facts.

Due to a threatened strike of the engineers and trainmen the United States took possession of the New York Central Railroad Company effective 4:00 o'clock P. M. on 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:

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,

scribed by Rule 18(a). The strike tying up railroad operations was not the fault of the Carrier. Consequently, **the Carrier had the right to reduce forces by abolishing positions on which no work remained or had been materially reduced.** At the time the positions were abolished, a strike terminating railroad operations was in effect. It was the cause of the abolishment of the positions. It cannot logically be said under the circumstances shown that the positions were abolished to avoid compliance with contract rules. It is true that some of the employes were not called back to work until May 26 and 27, 1946. Naturally **if the lag in freight service resulted from the strike carries over to these dates at some points, the Carrier was under no obligation to reestablish the positions until the work was there.** (Emphasis added.)

"It is urged that it was generally known that the strike would be of short duration and that the Carrier, for that reason, could not properly abolish the positions. This argument is very speculative. The duration of the strike could not be predetermined. So far as the record shows, **the Carrier could properly assume that it might exist for an indefinite period. During this period, the Carrier had the right to reduce forces.** Awards 3680, 3682. **The fact that the strike ended sooner than anticipated, does not have the effect of making violative of the contract that which would no otherwise have been."** (Emphasis added.)

The portions of the two paragraph which the carrier has emphasized are self-explanatory and in a most positive way support the contentions of the carrier in the claims of the N. Y. C. telegraphers now before the Board.

CONCLUSION

The carrier has shown that:

1. All positions referred to in these claims were abolished after each incumbent had been duly notified and, after the strike ended, positions were properly bulletined, as required, and assigned without regard to positions held by the applicants prior to the strike;

2. None of the claimants performed service for the carrier on any day for which payment is now demanded;

3. There is no logical basis for claims that positions must be continued when they are not needed and that the carrier pay for time not worked on non-existent positions;

4. The second paragraph of Article 12, the Guarantee Rule, refutes the claim as conditions resulting from the strike were "not within the control of the carrier";

5. The employes allege that Articles 2, 9 and 12 of the Agreement were violated. The true fact is that the three rules standing alone, or associated together, refute the claims and uphold the carrrier's Position;

6. Notice issued May 24, 1946 by the Federal Manager clarifying his Order No. 1 of May 17, 1946, also cited by the employes, further upholds the carrier's Position;

7. Awards of the Third Division, N. R. A. B. support the carrier's Position;

8. The claims are without merit under the rules and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On May 23, 1946, locomotive engineers and trainmen went on a nation-wide strike, thereby suspending practically all train movements. On May 24, 1946, the Carrier informed Claimants by telegraph or telephone that effective May 25, 1946, their positions were closed. The strike was settled on May 25, 1946, and the positions were advertised for

bids. Assignments were thereafter made in accordance with seniority status as provided by the agreement in force.

The Organization contends that the Carrier's abolishment of the positions was not in fact such and that Claimants should be paid for time lost by virtue of the guarantee rule (Article 12, Agreement effective February 1, 1943). This rule provides:

> "Except as provided in Articles 8 (d) and 11, regularly assigned employes will receive one day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, except on regular relief days and holidays.
>
> This rule shall not apply in cases of reduction of forces nor where traffic is interrupted or suspended by conditions not within the control of the carrier."

The second paragraph of Article 12 makes the first paragraph inapplicable in cases of force reduction or where traffic is interrupted or suspended by conditions not within the control of the Carrier. In other words, where either of those conditions exist, there is no applicable guarantee rule.

A nation-wide strike in the railroad industry brings about an interruption of traffic which is beyond the control of the Carrier within the meaning of this rule. Award 3341, 4389. Consequently, under the second paragraph of the quoted rule, there is no guarantee rule applicable in the present case. The reasoning contained in Award 4389 is particularly applicable here and sustains the conclusion that the second paragraph of Article 12 precludes an affirmative award in the present case.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of July, 1949.