

Award No. 4868

Docket No. CL-4830

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

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

(a) The Carrier violated "Memorandum of Agreement No. 4" of the Clerks' Agreement by their improper interpretation and abrogation of said Agreement on November 25, 1947 (Employees' Exhibit "7").

(b) Furloughed clerk Ray B. Steele and all other furloughed clerks adversely affected by the refusal of the Carrier to properly compensate them at the rate of time and one-half for the second and third tour of duty within a 24-hour period, subsequent to November 25, 1947, shall now be paid for all such loss sustained.

EMPLOYEES' STATEMENT OF FACTS: On December 31, 1946, the President of the United States issued a proclamation terminating the "Cessation of Hostilities of World War II", (Employees' Exhibit "1") and a statement covering the proclamation (Employees' Exhibit "2").

On January 16, 1947, Carrier's Western Division Superintendent issued notice (Employees' Exhibit "3") to the effect that President Truman's proclamation of December 31, 1946 cancelled Memorandum of Agreement No. 4. On April 18, 1947, the General Chairman filed claim for payment at the rate of time and one-half for all time worked in excess of eight hours in a 24-hour period by furloughed clerks (Employees' Exhibit "4"). On May 29, 1947, the Superintendent allowed the claim (Employees' Exhibit "5") and on the same date he issued notice (Employees' Exhibit "6") cancelling his notice of January 16, 1947 (Employees' Exhibit "3").

On November 25, 1947, the Assistant to General Manager, Mr. H. R. Fegley, wrote the General Chairman (Employees Exhibit "7") advising that Public Law 239, 80th Congress, Senate Joint Resolution 123, signed by the President on July 25, 1947, had the effect of discontinuing the National Emergency as contemplated in Memorandum of Agreement No. 4.

The General Chairman replied on January 31, 1948, (Employees' Exhibit "8") advising that "The war and the war emergency will be terminated by declaration of the President, or Act of Congress, but no such declaration or legislation has yet occurred."

On February 4, 1948, the Assistant to General Manager replied to the General Chairman contending that the Agreement, when made, was predi-

Award No. 3863 in Docket No. CL-3867, and you are urged to deny the claim of the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Memorandum of Agreement No. 4, which supplements Rule 20 of the effective Agreement of the parties, provides in effect that beginning December 16, 1943, and continuing "during the period of the present national emergency" furloughed clerks who perform two or three tours of duty within a 24-hour period shall be paid for the second and third tours at the time and one-half rate on an actual minute basis for time worked in excess of 8 hours.

On December 31, 1946, the President of the United States issued a proclamation reciting that although a state of war still existed there was a cessation of hostilities of World War II as of 12:00 o'clock noon on said day. On the same day the President issued a statement which said, in part: "It should be noted that the proclamation does not terminate the states of emergency declared by President Roosevelt on September 8, 1939, and May 27, 1941. Nor does today's action have the effect of terminating the state of war itself. It terminates merely the period of hostilities. With respect to the termination of the national emergency and the state of war I shall make recommendations to the Congress in the near future."

Predicating its action on the President's Proclamation of December 31, 1946, the Carrier, on January 16, 1947, took the position that Memorandum No. 4 was automatically cancelled and gave notice to the employees accordingly; but this notice was countermanded by the Carrier on May 29, 1947.

Thereafter, on November 25, 1947, the Carrier again declared that it would henceforth take the position that Memorandum No. 4 was no longer in effect, this time relying upon Public Law 239, 80th Congress, approved July 25, 1947. The sole question presented by this claim is, therefore, whether said Public Law 239 justified the Carrier's action.

We have carefully examined Public Law 239 and from it, we deduce the following facts: Section 1 repealed outright 55 war-time statutes or parts of statutes; Section 2 fixed specific future repeal dates for 12 additional war-time measures; and Section 3 provided that with respect to 102 additional such acts or parts of acts the effective date of the act of which said Section 3 was a part should "be deemed to be the date of the termination of any state of war heretofore declared by Congress and of the national emergencies proclaimed by the President on September 8, 1939, and on May 27, 1941". (Emphasis supplied by us.) As noted above, Public Law 239 became effective on July 25, 1947, and fully met the terms of the President's previous proclamation in which he stated how the national emergency would be terminated.

While we know that there has been no treaty of peace consummated with Germany or Japan and that we are still technically in a state of war with them, we think that the provisions of Section 3 of Public Law 239 quoted above effectually brought to an end the state of national emergency that the contracting parties had in mind when Memorandum of Agreement No. 4 was agreed upon. This conclusion is supported in principle by Award No. 3863, although it involved an agreement with terms somewhat different from the case here before us.

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 Employees involved in this dispute are respectively carrier and employees 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 13th day of June, 1950.