Award No. 6000
Docket No. TE-5721

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island & Pacific Railroad that—

(1) The Carrier violated the terms of the prevailing agreement between the parties when, on or about June 22, 1950, it declared abolished the positions of practically all of the employes under the Telegraphers' Agreement because of a strike by switchmen, and has refused to pay any of these employes their wages on any of the days they were improperly suspended from work during regular hours; and

(2) That each employe thus improperly deprived of his or her usual employment by the Carrier, on any or all of the aforesaid days, by being improperly suspended during regular working hours, and who was ready for service and not used, shall be reimbursed for the wage loss suffered during the strike period, June 25 to July 8, 1950 inclusive.

EMPLOYES' STATEMENT OF FACTS: There is an agreement as to rules and working conditions bearing an effective date of August 1, 1947, and as to rates of pay effective September 1, 1947, in effect between the parties to this dispute.

Due to a strike called by employes represented by the Switchmen's Union of North America for 6 A. M. June 25, 1950, the Carrier, on June 22 and/or June 23, 1950, without agreement or concurrence by the Organization, served notice on most of its employes covered by the Agreement, declaring their positions abolished and suspending them from work during regular hours, beginning 72 clock hours after receipt of the notice by said employes; when the latter were available and ready for service.

The following quoted telegram is representative of the type of notice Carrier served on the employes suspended from work on the days in question:

"Cedar Rapids, June 23, 1950
File 2541

Operators Cedar Rapids Yard.

Because strike called by Switchmen's Union of North America for June 25, 1950 will result in emergency conditions beyond our control necessitating complete abandonment of our service, your

A reading of Rule 19 should make it at once clear that it has no relevancy here. We are unable to determine why the organization asserts that it has a pertinency in the instant case and that it has been violated.

Manifestly, Rule 41 was in no sense violated in abolishment of the positions due to the cessation of operations because of the strike. Indeed, if Rule 41 was in any way violated, it was violated by petitioner in the position petitioner takes because that position is tantamount to a revision of the agreement inasmuch as its position was never within the contemplation of the contracting parties at the time the agreement was concluded.

A reading of the allegations of the organization with respect to the violation of specified rules of the agreement to which we have referred immediately above and to which reference was made in Mr. Christian's letters, makes it eminently clear that the design and purpose of the organization in this docket is to seek to obtain by means of a Board award a revision of the rules rather than a proper interpretation and application of them. That these facts are true is made manifest by the disinclination or failure of the organization to respond to inquiries which we made of the General Chairman as to what circumstances a position may properly be discontinued. We are left with the conclusion—consistent with their contentions—that what the organization is desirous of obtaining in this claim is payment for no services rendered. There is no requirement of the agreement here controlling that obligates the carrier to pay under the circumstances material and relevant to the instant matter for services not rendered.

Inasmuch as respondent meticulously complied with all rules of the agreement in all matters relating to the abolishment of positions due to the cessation of operations because of the Switchmen's Union of North America strike, and likewise conformed to all requirements of the agreement in the establishment of positions on the resumption of operations, we respectfully petition the Board to deny this claim.

It is hereby affirmed that all data herein contained is known to the employes' representative and is hereby made a part of this dispute.

OPINION OF BOARD: The parties are not in dispute on the facts important to a determination of this case. A strike on the Carrier's property having been called by the Switchmen's Union of North America to be effective 6:00 A. M., June 25, 1950, the Carrier notified the members of the Organization employed by the Carrier on June 22 and 23 that (1) their positions would be abolished 72 hours after their receipt of the messages; (2) they might exercise seniority on whatever telegrapher positions remained; (3) positions would be bulletined if and when re-established; and employes might leave names and addresses if they wished to protect their positions if and when re-established.

The General Chairman at once protested the Carrier's action as a lockout and work suspension in violation of Rules 1, 3, 6, 13 c, 19, 32, 33, and 41 of the Agreement and filed a blanket claim for all time lost by employes therefrom.

Following seizure of the property by the President and a restraining order by federal court, the strike was terminated July 8, 1950. Thereupon the Carrier began resuming operations and recalling telegraphers to work. They were informed they could hold positions in accordance with seniority, subject to displacement by senior employes and pending assignment of successful applicants upon bulletining of the position.

When the Carrier began advertising the positions as vacancies, the Organization, wishing not to have the lives of its members employed by the Carrier disrupted through the shifts of work and residence possibly entailed by the wholesale bulletining of positions, sought the services of the National Mediation Board. Through mediation the Carrier agreed to withdraw its bul-

letins and restore the employes to their previous positions, without prejudice to the Carrier's position on the matter which forms the basis of the instant dispute.

In support of its position the Organization contends as follows: (1) The Carrier violated the Scope Rule (1) during the strike because there was some telegrapher work to be done during the strike and some of it was performed by employes other than Organization members. (2) Rule 3 on the length of the basic day and Rule 6 (a) on the daily and weekly work guarantee were violated when the Carrier notified the Organization's members not to work during the strike. (3) Rule 6 (b), which waives the application of 6 (a)'s guarantee when work forces are reduced and "traffic is interrupted or suspended by conditions not within control of the Carrier", does not apply to the instant case because there was no bona fide reduction of force within the intent and meaning of 6 (b) and because the Carrier had a degree of control over the conditions which led to the suspension of traffic. Moreover, the Carrier had good reason to believe the strike would be of short duration. And certain of its notices to officers and employes establish that it was not abolishing and re-bulletining telegrapher positions in good faith. (4) Rule 13 (c) prohibiting suspension of work during regular hours was violated. What the Carrier did in the case is essentially no different from what it did during a previous strike, which was ruled on adversely by this Board in Award 4821. (5) The Carrier in effect treated all telegraphers as extra men and therefore violated Rule 19. (6) The provisions of Rule 32 on Vacancies, New Positions, Bulletining, etc. were violated. So also were the provisions of Rule 33 on reduction of force. Whether the Carrier's action is considered in the light of eliminating single or multiple positions or of making sizeable reduction of work force, its action cannot be held bona fide. The rules on abolishment of jobs do not contemplate such wholesale action as the Carrier took here. Further, they contemplate that, whatever jobs are abolished, the termination shall be final and permanent. And Rule 33 on reducing forces contemplates partial rather than total destruction. (7) Rule 41 on changes in and termination of the Agreement was in effect violated by the Carrier's unilateral decisions. (8) The Carrier in reality locked out its employes by denying them work which they were ready and able to do.

The contentions of the Carrier may be summarized as follows: (1) The claim, being a blanket one rather than in behalf of individual employes and not having been properly progressed on the property, is not properly before the Board. (2) There was no lockout because the Carrier did not withhold employment from the employes as a means of coercing them to accept the Carrier's terms. On the contrary the abolishment of positions and the subsequent re-bulletining thereof was bona fide and wholly within the applicable rules. (3) The Carrier was especially meticulous in doing these things because of the rulings in Award 4821 previously directed against Carrier in a previous strike situation. (4) Rule 6 (b) is particularly applicable here. The Carrier reduced its forces and did not observe the work guarantee because its traffic was suspended by conditions beyond its control. It is absurd to contend that the Carrier could well have yielded to the S.U.N.A.'s demands and thereby prevented the strike and the consequent necessity of reducing force. (5) Numerous Awards uphold the abolishment of positions when same is bona fide and not violative of Rules, as was the case in this dispute.

The general issue in this case is clearly drawn: In strike situations such as the one involved in the instant case, is the Carrier permitted under the terms of the Agreement to withhold employment, through abolishment of jobs, from the members of non-striking organizations in order to avoid additional pecuniary loss? If the answer to this question is in the affirmative, then there is the further, specific question, Did the actions of the Carrier in this case conform to the permissive Rules?

In respect to the general question we think the answer must be "yes". A chief basis for our ruling is to be found in Rule 6, the guarantee-of-work rule containing in paragraph (b) the above-mentioned governing exception. We cannot agree with the Organization than an interruption or suspension of

traffic by strike is one over which the Carrier possesses sufficient control to make the paragraph inapplicable. It does not appear that the Parties intended the paragraph to refer solely to suspensions caused by wholly impersonal conditions such as floods, earthquakes, or business depressions. Certainly the burden of proving otherwise bore on the Organization; and in our judgment this burden was not sustained.

A second reason for our ruling here lies in our inability to find in the Agreement any restrictions, general or specific, on action such as the Carrier took. In the absence of such restrictions and if the Carrier violates no rules, it would appear that it is free to proceed as it did in this case.

In respect to the second, specific question posed above, our answer is again affirmative. Here also the Organization was obligated to establish in the record compelling, definitive evidence of rules violation and bad faith. We can find no such weight of probative evidence. On the contrary, the Carrier appears to have been meticulous in following the terms of the Agreement covering the abolishment and bulletining of positions, the observance of seniority rights, and other relevant matters.

It appears desirable to comment on two specific contentions of the Organization: (1) We agree with the Carrier that its action was not a retaliatory lockout within any accepted meaning of that term. The Carrier had at the time no dispute with the Organization. (2) The Carrier had no way of knowing how long the strike would last. The fact that the strike turned out to be of not very long duration is not material to a determination of whether the abolishment of positions was bona fide.

In the light of the whole record bearing on the facts of this particular case we believe that the claim of the Organization must be denied.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 5th day of November, 1952.