Award No. 6354
Docket No. TE-6481

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD (LINE WEST OF BUFFALO)

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

(1) The Carrier violated the provisions of the prevailing agreement between the parties, when, on March 9, 10, 11 and 12, 1952, it declared abolished, positions of many of its employes covered by said Agreement, and improperly suspended such employes from their assigned positions during regular hours, and refused to compensate such employes for wage loss suffered on the days on which they were thus laid-off and improperly suspended from work during regular hours; and

(2) 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 period March 9 to 12, 1952 inclusive."

EMPLOYES' STATEMENT OF FACTS: There is an agreement as to rules and working conditions bearing an effective date of November 1, 1950, and as to rates of pay effective September 1, 1949, in full force and effect between the parties to this dispute.

At 8:00 A. M., Sunday, March 9, 1952, a strike was called by employes represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Engineers and the Order of Railway Conductors, resulting in the Carrier causing a suspension of portions of its railroad operations on this property between March 9 and 12, 1952, inclusive.

At different periods of time during Sunday, March 9 and Monday, March 10, 1952, the Carrier, without conference or agreement with the Organization, served notice by telephone, telegraph, bulletin or by messenger service, on most of its employes covered by the Agreement, declaring their positions abolished and suspending them from work during regular hours, even though these employes were available and ready for service.

was suddenly abolished due to circumstances beyond the control of the parties.

To construe the rule in the manner suggested by the Organization would be to impose upon the Carrier an unreasonable requirement, if not one often impossible of fulfillment. The result of such an application of the rule would be to compel the Carrier to give notice where the Carrier itself had no notice to give. In a condition such as that which existed in the present case, the only effect of applying this rule would have been to require the retention in employment of a vast force from whom no work whatsoever would have been required. The Carrier would have thus been placed in a position of being required to compensate these many claimants for doing nothing. Such construction of the contract is obviously antagonistic to the purpose and intent of the parties and should not be enforced against them.

Article 12 of the same agreement was a part of the contract for many years prior to the adoption of Article 37 and prescribes a guarantee of 8 hours' work on each day positions are assigned to work, except for rest days and holidays, with the proviso that "This rule shall not apply in cases of reduction of force **nor where traffic is interrupted by conditions beyond the control of the company.**" There is no evidence that when Article 37 was adopted there was an intention of the parties to modify or nullify the effects of Article 12, which plainly contains an exception applicable to the facts of this case.

It is a standard rule of construction of contracts that new rules or terms added to an agreement must be construed in the light of existing and unmodified terms. Such a principle has been many times adhered to by this Board. Most recently, in Award 5494 Referee Whiting, when confronted with a similar problem, said that "New rules must be interpreted in the light of and to accord with the existing rules to which they are added." Thus construed, Article 27 can have no broader or more extensive application than Article 12, and it must be concluded that the parties did not intend to impose an arbitrary rule requiring the giving of advance notice of force reduction in all cases and regardless of circumstances. On the contrary, it was plainly the purpose of the parties in adopting Article 37 to insert into the contract a provision applicable only to situations other than those of an emergency nature, or those beyond the control of the parties. Thus properly construed, the rule can have no application to the facts of this dispute, and these claims should be denied (Exhibits not reproduced.)

OPINION OF BOARD: Claim is here made for all wage loss sustained on March 9, 10, 11 and 12, 1952, inclusive, by those employes affected by the Respondent's alleged improper action in abolishing a substantial number of positions resulting in the suspension of the occupants thereof.

The record contains no conflicts as to relevant facts.

At 8:00 A. M. on March 9, 1952 those employes represented by the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and the Brotherhood of Locomotive Engineers participated in a work stoppage which resulted in a more or less complete curtailment of operation and train movements until March 12, 1952.

Then an approximately 1002 positions covered by the controlling Agreement of which number some 735 were affected during all or part of the four days in question by the hereinbelow described acts of the Respondent of which the Organization complains and alleges were in contravention of applicable rules.

During the morning of March 9, 1952, Respondent gave notice to the occupants of a substantial number of positions that their positions were to be abolished, effective at 3:30 P. M., March 11, 1952. Later in the day these

notices were supplanted by other notices which gave advices that certain positions were to be considered abolished as of the morning of March 10, 1952. On this date, that is, March 10, 1952, still other notices were issued abolishing positions as of different hours on said date or "at once".

The Organization asserts that the abolishment of the positions in question was accomplished in a manner clearly contrary to the 48-hour notice limitation stated in Article 37 of the effective Agreement, and that since said positions were not abolished in the required manner, they continued to exist, and the occupants thereof are entitled to be compensated for all time lost on the four days in question.

The Respondent takes the position that the abolishment of the positions here was contractually permissible within the meaning of Article 12, and that Article 37, while applying to ordinary and normal operations was never intended to be operative under strike conditions.

Articles 12 and 37 read as follows:

> Article 12—"A regularly assigned employe shall receive on day's pay within each 24-hour period according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than 8 hours as per location, except on his assigned rest days when occupying positions regularly represented for 8 hours a day on 7 days a week, or on his assigned rest days and holidays when occupying positions regularly represented less than 7 days a week. This rule shall not apply in cases of reduction of force nor where traffic is interrupted by conditions beyond the control of the Company."
>
> Article 37—"Before a position is abolished, the employe(s) directly affected shall be given not less than 48 hours' advance notice."

In view of the fact that not all of the positions covered by the Agreement were abolished it can be properly concluded that for all practical purposes the Respondent's action here amounted to a reduction of forces. Article 12 of the effective Agreement is a guarantee rule wherby among other things an employe is guaranteed one day's pay within each 24-hour period. This Division has held in innumerable Awards that the guarantee rule applies to the employe and not the position. Article 12 specifically provides that the guarantee provisions shall not apply to either reductions in force or where traffic is interrupted by conditions beyond the control of the Respondent. No mention is made nor is any condition or limitation contained in Article 12 that can be said to apply to the abolishment of positions.

Since it is admitted that the Carrier abolished the positions in question it is necessary to look to the effective Agreement to determine if any contractual prohibition or limitation exists as to the abolishment of positions.

Article 37 is clear and without ambiguity. Thereby the Respondent is required to give any employe **not less** than 48 hours' advance notice. No qualification or waiver of this mandatory requirement is contained in the rule. It must be assumed and concluded if a limitation to Article 37 has been contemplated by the parties it would have been included therein as was done in Article 12.

The Respondent's assertion that the exceptions contained in Article 12 are a bar to the requirement of 48 hours' advance notice of intention to abolish positions is without merit.

Likewise the contention of the Organization that the employes affected by the abolishment of the positions in question are entitled to reimbursement for all wage loss incurred on March 9, 10, 11 and 12, 1952 is without merit.

Article 37 provided for a 48-hour notice. The failure of the Respondent to give such notice was a violation of the Agreement but each employe adversely affected is entitled to compensation only in such sums as would have accrued to him had the notice provision of the Article been complied with.

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

That the Carrier violated the Agreement.

AWARD

Claim disposed of in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of September, 1953.