Award No. 6470
Docket No. MW-6320

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward M. Sharpe, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE NEW YORK CENTRAL RAILROAD COMPANY
(Line West of Buffalo)

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

(1) The Carrier violated the effective agreement and specifically Rule 26 (a), when during the week of March 9, 1952, it failed to properly notify employes subject to the provisions of the Maintenance of Way Agreement that they were being laid off in force reduction or that their positions were being abolished;

(2) Each employe thus deprived of their regular employment during the four-day period provided for in Rule 26 (a), be paid the equivalent wage they would have received had they been permitted to work the hours of their regular assignment.

EMPLOYES' STATEMENT OF FACTS: During the week of March 9, 1952, the majority of the employes subject to the provisions of the Maintenance of Way Agreement, were laid off as the result of a strike of other classes of employes.

The employes thus affected by the reduction in force or the abolishment of their positions were not given the four calendar day notice provided for in Rule 26(a) of the effective agreement.

Instructions issued relative to this reduction in force or abolishment of positions, were, in the majority of instances, transmitted to the employes in verbal form. A majority of the forces were out of service from the time notified on either March 9th or March 10th, 1952, until the beginning of their work period on March 14, 1952.

It is the contention of the Brotherhood that the Carrier's procedure whereby they reduced said forces, was in violation of the agreement and specifically in violation of the following provisions of that agreement:

1. Rule 26(a)

   Letter of Understanding relative to the application of Rule 26(a) dated June 13, 1950.

It is the contention of the Carrier that the rule referred to by the Brotherhood in support of their position, is not applicable in this instant case be-

The present rule, containing the provision for notice, was first written into the agreement effective June 1, 1946. It is important to observe that the notice portion of the rule was at that time simply appended to the old rule by the addition of a new sentence in the same paragraph. This serves to make it clear that the amendment was intended to deal with the same subject matter as did the original rule; that the entire rule was to be considered together, and that the notice requirement extended only to the normal reductions in force necessary to reduce expenses referred to in the original rule.

It is significant that at no time did any draft of this rule make any mention of abolishing the entire force. Neither did it at any time, directly or indirectly, refer to emergency situations such as those produced by a cessation of railroad operations, and inability of the Carrier to safely continue the work of these employes. The parties cannot reasonably be charged with having written their agreement to govern such a state of affairs and it should not now be so extended by a decision of this Board.

OPINION OF BOARD: At 8:00 A. M. on Sunday, March 9, 1952, with no advance notice to the Carrier a general strike against the Carrier was called. Picket lines were established — operations were not resumed until March 12, 1952 when most of the striking employes returned to their jobs. As soon as its railroad operations were terminated, the Carrier proceeded to terminate the services of all employes whose work was thereby eliminated.

The sole issue in this case is that arising out of the failure of the Carrier to comply with the notice requirements of Rule 26 (a) of the Agreement. This rule reads as follows:

"(a) LAYING OFF MEN INSTEAD OF REDUCING HOURS:

"When it becomes necessary to reduce expenses, gangs will not be laid off for short periods, but in lieu thereof junior employes will be laid off. If and when force is to be reduced, not less than 4 calendar days' notice shall be given to regularly assigned employes before such positions shall be abolished."

It is the position of the Carrier that the provisions of the rule are concerned exclusively with the routine and orderly changes in force which occur in the normal course of railroad operations and that it does not apply to a situation where the entire force is abolished as the result of a strike.

It is the position of the employes that the provisions of Rule 26 (a) are clear and unambiguous and that positions can be abolished only after giving the four calendar days' notice provided therein.

It is the position of the Carrier that Rule 26 (a) has no application to the facts involved in this case as all jobs were abolished and there were no positions to which Claimants could have exercised their seniority rights.

Previous decisions have held that strike situations are emergencies beyond the control of management. See Awards 3841, 4389, 4455 and 5779. It has also been held that in such situations the carrier can abolish jobs. See Award 6000. This ruling is confined to the facts in this particular dispute.

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 under the facts in the case at bar 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 29th day of January, 1954.