Award No. 6471

Docket No. MW-6321

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward M. Sharpe, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MICHIGAN CENTRAL RAILROAD

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

(1) That the Carrier violated the effective agreement, and specifically, Rule 7, Sections 8 and 9, when as of March 10, 11, 12, and 13, 1952, it failed to employ Maintenance of Way Employes to whom the agreement of December 1, 1950, as amended, is applicable:

(2) That each Maintenance of Way employe thus improperly deprived of their usual employment during the period referred to in Part (1) of this claim, 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: As of Monday, March 10, 1952, a majority of the Carrier's Maintenance of Way forces were laid off as a result of a strike by other classes of railroad employes. Some of the Maintenance of Way forces were retained in service for a portion of the assigned working period on March 10th, and a few others were held in service until March 11th for the purpose of locking up buildings.

Instructions issued relative to this reduction in force or abolishment of positions, were transmitted to the Maintenance of Way employes in verbal form, with the exception of some few Crossing Watchmen who were notified by bulletin that their assigned positions were cancelled. The employes were not given the four-day calendar notice required by Rule 7, Section 8 of the effective agreement.

The large majority of the Maintenance of Way forces were out of service from the time notified until the beginning of their work period on March 14, 1952, when they were recalled for service in their regular assignments, although a few tunnel watchmen were retained in service throughout the period of the shutdown. In addition, a few Crossing Watchmen were recalled to service at the time train operations were resumed which in some instances took place prior to the assigned starting time on March 14th.

It is the contention of the Brotherhood that the Carrier's procedure whereby they reduced their Maintenance of Way forces, was in violation of the

OPINION OF BOARD: On Monday, March 10, 1952, a majority of the Carrier's maintenance of way forces were laid off as a result of a strike by other classes of railroad employes. Instructions issued relative to the reduction in force or abolishment of positions were transmitted to the maintenance of way in verbal form. The employes were not given the four-day calendar notice required by Rule 7, Sec. 8.

It is the position of the Carrier that the strike began without advance notice to or knowledge of the Carrier and that the immediate result of the strike was to completely stop all of Carrier's railroad operations and the intent and purpose of Rule 7, Section 8, is to afford employes opportunities to exercise their seniority and was never intended to apply to a strike situation such as existed in the instant case. There are numerous awards to the effect that positions will not be abolished where there is work to be performed. See Awards 3702, 3715, 4170 and 5074.

The pivotal question in the instant case is whether Sec. 8 of Rule 7 applies in the case of a strike. In Award 5042 it was held that under a strike situation a carrier could abolish positions without violating the rule, provided there was a bona fide abolishment, but if positions were not in fact abolished and only suspended, then the Carrier violated the Agreement; see Award 5212.

The Carrier urges that the positions were abolished. This claim is not denied by the Organization except that it claims that there was work that the employes could perform. Under strike situations the carrier has the right to abolish positions. The record shows that on March 9, 1952, the employes were notified that their positions were abolished. Under such circumstances the Carrier did not violate the Rule. 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 the Agreement was not violated.

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.