

Award No. 14997
Docket No. TE-13544

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, Southwestern Region, that regular assigned Block Operator J. T. Coyne, 2nd trick Switz City, was not properly notified his job was abolished, reported back from vacation at 4:00 P. M., September 6, 1960 and was told not to work.

Time slip was submitted eight (8) hours at time and one-half rate because second relief day was Labor Day, which was denied. Claim is payable under Regulation Scope, 5-F-1, 4-G-1, 4-H-1 (c), 5-B-1 (a).

EMPLOYEES' STATEMENT OF FACTS: The facts in this claim are fairly stated in the correspondence exchanged between Mr. Max Lawson, District Chairman, Switz City, Indiana; Mr. J. S. Stewart, Superintendent-Personnel, Indianapolis, Indiana; Mr. A. Swilling, General Chairman; and Mr. Herman Kendall, Manager, Labor Relations, both Philadelphia, Pennsylvania.

LAWSON TO STEWART, SEPTEMBER 24, 1960

"I have the following subject for discussion at our next schedule meeting October 14, 1960.

'Claim of the General Committee of the Order of Railroad Telegraphers, Southwestern Region, that regular assigned Block Operator, J. T. Coyne, 2nd trick Switz City, was not properly notified his job was abolished, reported back from vacation at 4:00 P. M., September 6, 1960, and was told not to work.

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By time slip dated September 6, 1960, Claimant requested payment of twelve hours for said date (eight hours at time and one-half) account "second relief day was Labor Day." The Division Operator denied the request by letter of September 19, 1960.

Under date of September 24, 1960, the District Chairman, Order of Railroad Telegraphers, listed a claim identical to that quoted at the beginning of this Submission, with the Superintendent, Personnel, Southwestern Region, who denied it on October 19, 1960.

The matter was thereafter handled in the usual manner, and at a meeting on July 7, 1961, the General Chairman presented the claim to the Manager, Labor Relations, who denied it by letter of July 18, 1961, pointing out, in part, that:

"During discussion of this case it was your position Management was required to notify Claimant of the abolishment of his assignment.

It was pointed out to you that there was no regulation in the applicable Schedule Agreement which provides that the Carrier is required to notify employees when their position is abolished.

In the instant case, Management not only posted a notice in Switz City Tower advising the employees assigned at that location their positions were abolished, but made numerous announcements via the radio and television that the Pennsylvania Railroad was not operating, due to the strike of their Shop Craft employees.

Under the circumstances, Management more than fulfilled their obligation to the employees, and claim is without merit, and is denied."

Therefore, so far as Carrier is able to anticipate the basis of this claim, the questions to be decided by your Honorable Board are whether the Rules Agreement requires Carrier to notify employees of abolishment of their positions, and whether Claimant is entitled to the compensation claimed.

OPINION OF BOARD: Claimant held a regularly bulletined position as Operator at Switz City, Indiana; tour of duty 4:00 P. M. to 12:00 P. M., with rest days Sunday and Monday. Claimant was on vacation from August 16, 1960 through September 5, 1960.

Upon reporting back from vacation, Claimant was advised that his position was "abolished", and told not to work. This claim is for eight hours at the premium rate for Labor Day. The Claimant contends that Carrier violated the Agreement because it failed to give notice of the "abolishment" of his position prior to reporting for work on September 6, 1960.

Because of a threatened system-wide strike (which materialized on September 1, 1960) Carrier addressed the following letter dated August 29, 1960, to the General Chairman of the Railroad Telegraphers:

"This refers to your letter dated August 29, 1960, and our discussion in connection with a strike set for 12:01 A.M., September 1, 1960, by the Transport Workers Union and System Federation No. 152.

It is understood that the following will become effective if the strike materializes and will remain in effect only during the period of the strike:

1. All positions covered by the ORT Agreement which will be affected by the strike, effective 12:01 A.M., September 1, 1960, will not be considered abolished in fact and when strike is terminated, all employees will resume duty on their respective positions.
2. Employees, qualified on physical characteristics, will be permitted to exercise their seniority by displacement, in accordance with the provisions of the applicable agreement, to assignments which are maintained and work during the strike.
3. Employees exercising displacement rights to positions which are maintained and work during the strike will return to their former positions they held prior to the strike so that all employees will return to their respective positions they held prior to date of strike, as provided by Item 1 of this Agreement.
4. It is understood that employees promoted under Regulation 2-S-1 will not be permitted to exercise displacement rights.
5. All displaced employees will be considered as extra employees. When necessary to fill vacancies on those positions which are maintained due to incumbents being absent or not available for any reason, Rule 5-E-1 will apply."

Under the circumstances, it is clear that Claimant's position was not "abolished" in the strict sense. It was, pursuant to the terms of the agreement, suspended and unfilled for the duration of the strike.

Further, the Claimant had "constructive notice" of the agreement, and such notice was all that was required.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was not violated.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December 1966.