

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****(Supplemental)**

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES****ILLINOIS CENTRAL RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5814) that:

(a) Carrier violated the Clerks' Agreement at Paducah, Kentucky, when on April 10, 1964, it failed to return Yard Clerks T. E. Wallis and C. E. Carner to their respective positions after the termination of the strike by the four operating crafts.

(b) Messrs. T. E. Wallis and C. E. Carner shall now be compensated one day's pay for April 10, 1964, at the pro rata rate of their positions, \$19.82 and \$19.75, respectively.

EMPLOYEES' STATEMENT OF FACTS: Prior to 3:00 P. M., April 8, 1964, Claimants Wallis and Carner occupied regularly assigned yard clerical positions, 7:00 A. M. to 3:00 P. M. in the Carrier's train yard facilities at Paducah, Kentucky.

Effective 4:30 A. M., Wednesday, April 8, 1964, a strike was initiated against the Carrier by the employes represented by the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Engine-men, the Brotherhood of Railroad Trainmen, and the Order of Railway Conductors and Brakemen.

As a result of the strike, the Carrier on April 8, 1964, notified the Claimants and all, or nearly all, employes holding positions on its property subject to the rules of the Clerks' Agreement that their positions were abolished at the end of their assigned hours on that date.

April 9, 1964, Manager of Labor Relations W. J. Cassin and General Chairman R. W. Copeland agreed that all positions abolished due to the emergency would be considered re-established at the termination of the strike and the employes would be restored to their former positions. The Agreement reads as follows:

engines into operation. Mr. Copeland was informed of the results of the investigation at conference on May 7, 1965.

The Clerks' Agreement, effective June 23, 1922, as amended, is by reference made a part hereof.

II. ISSUE

The issue in this case is whether, under the agreement of April 9, 1964, the company was required to return the claimants to service before the work of their positions was available to perform.

OPINION OF BOARD: On April 8, 1964, the Carrier was struck by several organizations not parties to this dispute. The Carrier immediately notified nearly all its employes subject to the Clerks' Agreement that their positions were abolished at the end of their assigned tour that day.

The next day, while the strike continued, the Carrier and the Employes agreed

"That all positions abolished due to this emergency will be considered re-established at the termination of the strike, and those employes who were formerly regularly assigned will be returned to their former positions as soon as practicable."
(Emphasis ours.)

The resolution of the instant dispute depends upon an interpretation of the above-quoted words, "as soon as practicable." On April 10, 1964, at 5:10 A. M., the strike was finally terminated on the Carrier's property at Paducah, Kentucky. At 7:00 A. M., one of the two claimants reported to work but was soon advised that he could not work until the following day. The other claimant did not report to work his position at 7:00 A. M., although he was apparently ready to work, but he was not called back to work by the Carrier until the following day. Other employes covered by the Clerks' Agreement did return to work that morning in locations other than that of the two claimants, and all work had been resumed by the afternoon of that day.

The Carrier asserts that there was no work for the two claimants to perform less than two hours after the strike terminated at Paducah, that the switch engines there did not resume operation until the afternoon, that all the employes who were allowed to return to work that morning in all other locations either had immediate work to perform or unfinished work to perform, and that the phrase "as soon as practicable" in the special agreement covering this situation provided the Carrier with the ability to refuse to return the claimants to work until there was work to be done.

The Board finds that the phrase "as soon as practicable" must be given some meaning. The Carrier obviously did not have to resume paying its employes precisely at 5:10 A. M., the moment when the strike ended. Both the Carrier and the Employes, by their special agreement, anticipated that both would exert every reasonable effort to resume normal train operations as soon as possible after termination of the strike. But by the very terms of the special agreement, even though all abolished positions would

be immediately re-established, the persons who formerly were assigned to such positions would not be returned to such positions immediately but, rather, "as soon as practicable." The parties evidently comprehended thereby the understood difficulties in returning to life a motionless railroad system.

The Employes have not convinced the Board that it was practicable for the Carrier to return the two claimants to their former positions at the time in question, less than two hours after the strike ended. For this reason, the claims must be denied.

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 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 there was no violation of the special agreement of April 9, 1964.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1967.