Award No. 15971
Docket No. TE-14045

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Wabash Railroad, that:

1. Carrier violated the terms of an Agreement between the parties hereto when effective Friday, August 31, 1962, it declared abolished the first, second, third and relief positions at DeCamp, Illinois, and a relief position at Edwardsville, Illinois, without proper notice.

2. Carrier shall, because of the violation set out in paragraph 1 hereof, compensate the following employes as hereinafter set forth:

K. A. Potter – 1st shift, DeCamp Tower	$131.19
H. A. DeHart – 2nd shift, DeCamp Tower	100.91
C. H. Johnson – 3rd shift, DeCamp Tower	40.36
J. P. Skelton – Relief position, DeCamp Tower	40.36
L. E. Hall – Relief position, Edwardsville	112.92
J. M. Cooper – Extra Telegrapher	20.90
A. R. Womack – Extra Telegrapher	90.78

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective September 1, 1955, and as amended. Copies of said Agreement, under law, are assumed to be on file with your Board and are, by this reference, made a part hereof.

DeCamp Tower (interlocker) is located on Carrier's main line between St. Louis, Missouri and Decatur, Illinois at the Chicago and North Western crossing. Edwardsville, Illinois is located on this same stretch of track.

At the time the incident arose which precipitated these claims, the Carrier maintained service at DeCamp Tower on an around-the-clock basis.

K. A. Potter was the regular occupant of the first shift position. His assigned hours were 7:00 A. M.-3:00 P. M. Work week Sunday through Thursday, Friday and Saturday rest days.

The Order of Railroad Telegraphers ended their strike against the Chicago and Northwestern Railway on Friday, September 28, 1962, and that Carrier resumed its service over the weekend, i.e., Saturday and Sunday, September 29 and 30, 1962.

On the afternoon of September 29, 1962, Messrs. Potter, DeHart, Johnson, Skelton and Hall were forwarded messages from the Chief Train Dispatcher advising that the positions to which they had been assigned were being reopened as follows:

Mr. DeHart's position at 3:00 P. M., September 29, 1962

Mr. Johnson's position at 11:00 P. M., September 29, 1962

Mr. Potter's position at 7:00 A. M., September 30, 1962

Mr. Hall's relief position at 8:00 A. M., September 30, 1962

Mr. Skelton's relief position at 3:00 P. M., September 30, 1962

and requesting that they advise whether they desired to resume their former positions. This was in accordance with the last paragraph of Rule 16(e) quoted above. They all replied in the affirmative and resumed work thereon at the initial re-opening of those positions.

Copy of all of the correspondence between the representatives of the parties is attached hereto and made a part hereof, marked Carrier's Exhibit I.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier, beginning at 10:10 A. M., August 30, 1962, issued notices to the employes whose assignments included work at DeCamp, Illinois that their positions as telegrapher-levermen were abolished as of August 31, 1962. No reason was stated in the notices but the abolishments were due to a strike on the Chicago and North Western Railway (C&NW), which crosses the Carrier's tracks at DeCamp. These crossings are protected by an interlocking plant which is operated on a continuous basis by employes of the Wabash.

The Employes contend that the C&NW strike did not affect this Carrier, either in its operation or revenue, therefore, the provisions of Article VI, August 21, 1954 Agreement did not come into play as an exception to the five-working day notice provisions of Article III, June 5, 1962 Agreement. Carrier alleges Article VI is applicable in this situation.

Article III reads:

> "Effective July 16, 1962, existing rules providing that advance notice of less than five (5) working days be given before the abolishment of a position or reduction in force are hereby revised so as to require not less than five (5) working days' advance notice. With respect to employes working on regularly established positions where existing rules do not require advance notice before such position is abolished, not less than five (5) working days' advance notice shall be given before such positions are abolished. The provisions of Article VI of the August 21, 1954 Agreement shall constitute an exception to the foregoing requirements of this Article."

Article VI provides:

"Rules, agreements or practices, however established, that require more than sixteen hours' advance notice before abolishing positions or making force reductions are hereby modified so as not to require more than sixteen hours such advance notice under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike, provided the Carrier's operations are suspended in whole or in part and provided further that because of such emergency the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employes involved in the force reductions no longer exists or cannot be performed."

Both Agreements were in effect on this property at the time the complaint arose.

Article VI was interpreted in Second Division Award 2195. The referee astutedly noted that before Carrier may invoke an emergency condition, two requirements must exist. These are:

"First, the emergency conditions must cause the Carrier's operations to become suspended in whole or in part . . .

Second, that because of such emergency conditions the work which would ordinarily be performed by the incumbents of the positions to be abolished, or by the employes involved in the force reductions no longer exists or cannot be performed . . ."

Did the strike, by another Carrier, C&NW, create an emergency which caused "the Carrier's operations to become suspended in whole or in part?"

Award 11214 supports the Employes' position. It holds in part:

"A mere reduction of the work force did not alone establish an emergency which required the Carrier to suspend its operations in whole or in part. There must be a showing that the operations — the movement of trains — was suspended in whole or in part. There is no such showing in the record and no such evidence was submitted on the property."

* * * * *

"Carrier had every right to furlough Claimants because of the strike or for any other reason. But that right is governed by the provisions of Rule 5 and not by Article VI of the August 21, 1954 National Agreement. Carrier did not comply with the provisions of Rule 5."

In the instant dispute there was no cessation in Carrier's operation in whole or in part nor was there a drastic reduction in operations which constituted an emergency situation to enable the Carrier to abolish the Claimants' positions without compliance with the provisions of Article III, June 5, 1962 Agreement.

Carrier argues that under the mandatory provisions of Rule 28, Section 1 (a) of the Agreement, the claims of Cooper and Womack were not timely

filed within the 60-day limit. Also these two Claimants are not within the class to be readily identifiable in the claim of September 1, 1962.

Though there are conflicting Awards on this issue, we believe that where a procedural question is raised on the property, such as in the instant dispute, and inasmuch as the Carrier did not receive a proper claim until after the time limit for filing, nor did the Organization revise the claim of September 1 to comply with the provisions of Rule 28 Section 1(a), the two claimants, Cooper and Womack, will be barred from recovery.

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 the Carrier violated the Agreement.

AWARD

Part (1) of claim sustained.

Part (2) sustained as to all employes so named, except as to Claimants Cooper and Womack.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1967.

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