Award No. 16746
Docket No. MW-16982

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Milton Friedman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LOUISVILLE & NASHVILLE RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when, without proper notice, it required the members of Section Gang No. 36, Ravenna, Kentucky, to suspend work on April 4, 1966.

(2) Foreman Albert Aines, Assistant Foreman Earl Rison, Laborers P. Johnson, W. T. Richardson, W. Portwood, R. Sparks, Jr., A. Puckett, Neal Smith, Sr., S. Estes, C. Stamper, B. R. Helton and Rail Oiler Attendant L. W. Aines each be allowed eight (8) hours' pay at his respective straight time rate because of the violation referred to above.

EMPLOYES' STATEMENT OF FACTS: The claimants were members of the gang assigned to Section No. 36, with headquarters at Ravenna, Kentucky. They were regularly assigned to work Monday through Friday of each week.

On Monday, April 4, 1966, the claimants reported at their tool house in advance of their regular starting time. They were met by Roadmaster Napier, who informed them that they would be required to work on the runaround track at the coal washing plant, Calla, Kentucky. Each of the claimants refused to do so because members of the United Mine Workers of America, who were on strike against the South East Coal Company, had established a picket line at the coal washing plant. The claimants advised the Roadmaster that they were unwilling to endanger life and limb by crossing the picket line but that they were willing to perform any other work on their section territory.

Roadmaster Napier instructed the claimants to return to their homes and report back to work the following day. Because the claimants were not permitted to work on April 4, 1966, they each suffered a wage loss of eight hours at their respective straight time rate.

writing, not later than 10 days from time cut off. This notice from the employe must be sent in duplicate to the Division Engineer, who will return one copy, receipted, to the employe. Periodic renewal of address is not thereafter required, but the employe is required to advise promptly in similar manner of any change in address. When his time comes for recall to the service, handling will be given in line with Rule 22(f). Employes protecting their seniority under this rule will not be required to renew their address because of being used on temporary or extra work.

21(h) Laborers shall at any time have the right to displace junior laborers on special jobs on which more pay regularly accrues, if competent to perform the duties required."

Rule 21 refers to a reduction in force and was not applicable in this case. Therefore, the claim was declined.

Copies of correspondence exchanged in connection with the claim are attached and identified as Carrier's Exhibits AA through II.

There is on file with this division a copy of the current working rules agreement and it, by reference, is made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: On April 4, 1966, Claimants refused to work on the runaround track at the coal-washing plant at Calla, Kentucky. It appears that the United Mine Workers were on strike at the plant and were picketing its premises. There was no dispute between Carrier and the Mine Workers, and the work to be performed was on Carrier's property. When Claimants declined to work on the runaround track, offering to work anywhere else on their territory, they were sent home. Each claims pay for the day in question.

According to the Employes, it would have been necessary to cross a picket line in order to get to work, and they feared for life and limb. Carrier contended that the men would have been transported by rail and would not have been obliged to cross a picket line.

A distinction must be made between the actions of employes in voluntarily supporting another union's strike and in being unable to go to work because a genuine danger exists. Clearly, in the first case an employer owes no obligation either to provide work in a more satisfactory and congenial location or to pay for the day. In the second case, however, Carrier would have an obligation to provide either work in a safe place or the benefits of any appropriate contractual guarantees. In that case, though, the presence of actual hazard must be established by the Employes. Carrier is not obligated to surmise it nor can the Board be expected to infer it.

Carrier's contention that the Claimants would not have crossed a picket line to go to work was not countered with any evidence to the contrary, beyond the Employes' repetition of the original assertion. In the absence of proof that crossing a picket line was necessary to reach the work site, it must be held that the presence of any actual danger at all has not been established.

Consequently Claimants have not justified their refusal to perform the assigned work. Under the circumstances Carrier had no obligation to assign the men elsewhere. Their failure to work was the result of a voluntary choice, and the loss of time which resulted therefore requires no recompense under any rule in the Agreement.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of November 1968.

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