



Award Number 17957

Docket Number CL-18094

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION
EMPLOYEES

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6525) that:

- 1) Carrier violated the Clerks' Rules Agreement at Muskego Yard, Milwaukee, Wisconsin, when on July 18, 1967, the employees were sent home because they did not report for work on time.
- 2) Carrier shall now be required to compensate the following employees at the pro rata rate of their respective positions for July 18, 1967.

		<u>Position No.</u>
J. D. Snodgrass	7 hrs	Rel. #18
W. E. Craft	6 "	09820
E. F. Hawe	6 "	09550
A. J. Cary	7 "	09540
E. H. Scholz	7 "	09500
L. L. Christianson	7 "	07180
F. N. Bowersock	6 hrs 30 min.	07160
F. A. Kuenzli	7 "	09770
J. A. Draeger	6 "	09900
J. A. Albin	6 "	07190
J. R. LaCroix	6 "	09620
S. H. DuPuy	7 "	07310
A. J. Wuerl	6 "	17110
F. H. Holzem	6 "	09470

EMPLOYEES' STATEMENT OF FACTS: Due to strike by the employees represented by the Shop Crafts employees' organization, Carrier operations were at a standstill on Monday, July 17, 1967, and the positions of non-striking employees, including claimants, were abolished.

On the evening of July 17, 1967, the aforementioned claimants were notified by telephone by Agent R. E. Chalifoux that the strike of the shop craft organization employees had terminated, operations were to be resumed, and that each employee should report for his assignment the following morning. Tuesday, July 18, 1967.

Not having reported for work at the fixed starting time of their respective positions on July 18, 1967 or, in other words, having voluntarily absented themselves from their respective positions without proper authority on July 18, 1967, the claimants were not allowed to commence performing service on their respective positions when they finally did report for work at approximately 9:00 AM on July 18, 1967 or, in other words, when they reported from one (1) to two (2) hours late or after the fixed starting time thereof.

Attached hereto as Carrier's Exhibit "A" is a copy of letter written by Mr. S. W. Amour, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of December 6, 1967.

(Exhibits not Reproduced)

OPINION OF BOARD: Because of a strike by the Shop Crafts employees Organization, the Carrier operations were at a standstill on Monday, July 17, 1967, and the position of the non-striking employees, including Claimants, were abolished. This latter action was taken by Carrier under the provisions of the emergency condition, strike portion of Rule 12 (a) of the Agreement. On the evening of July 17, 1967, the Claimants were notified by Agent Chalifoux that the strike had ended and were told to report for work on the morning of the 18th. Upon arrival at their place of work, a picket line was still in existence. This picket line was eventually removed at approximately 9:00 A.M., at which time claimants attempted to return to their jobs, but were advised to go home since they had failed to report at their respectively designated starting times. Some of the Claimants, due to the picket line, were 1 hour late, others were two hours late. Claim has been submitted for 6 and 7 hours at the pro rata rate for the 18th excluding the hour or two employees were unable to report because of the picket line. By refusing this claim, the Organization contends that Carrier has violated Rules 15, 26, 30 and Article I of the February 7, 1965 Agreement.

We agree with the arguments propounded by the Carrier that essentially there were no violations of Rules 15 or 26 of the Agreement. Rule 15 is the basic 5 day per week rule and Rule 26 is the basic 8 hour per day Rule.

Rule 30 reads as follows:

"RULE 30—REPORTING AND NOT USED

"(a) Employees required to report for work at regular starting time and prevented from performing service by conditions beyond the control of the Railroad Company will be paid for actual time held with a minimum of two (2) hours."

The question posed with relation to the above is whether the picket line itself constituted a condition beyond the control of Carrier, thus preventing the employees from going to work. We need not concern ourselves with this theory since it was summarily dismissed by the Organization in its' ex parte submission in favor of the argument that Carrier arbitrarily prevented these employees from assuming their assigned tasks. Carrier's justification for their action in this case appears to be that since employees did not cross the picket line, and hence were not at their jobs at the precise, fixed starting time, they somehow constructively were absent without leave or their actions effectively, albeit temporarily, constituted a constructive abandonment of their respective positions. We find no quarrel with Carrier's

argument that each position has a fixed starting time and that each employee is required to work 8 hours, not 6 or 7 hours per day. However, under the circumstances of this case, when it finally became apparent that the strike had ended, and when the picket line had finally been removed, and the employees presented themselves for work, we, in the interest of fostering substantially good collective bargaining relations, cannot understand why Carrier refused Claimants their right to work. To take the position that Claimants under these circumstances were not on time and hence were absent without proper authority, is placing a strained, tortuous construction on the Agreement in our judgment. We think Carrier was arbitrary and capricious in this action.

It is true the Claimants were recalled, but the subsequent action of Carrier was violative of the spirit and intent of the Agreement. We will sustain the claim.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1970.