Award Number 17964
Docket Number SG-18111

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company that:

(a) Carrier violated the August 21, 1954 Agreement and the Mediation Agreement dated February 7, 1965, when it failed to give sixteen hours notice of job abolishment on July 17, 1967, and it also violated the same agreements as the work normally performed by these employees could have been performed.

(b) Carrier be required now to pay Messrs. C. E. Jones, B. J. Lilla, J. L. Fredrick, and L. K. West eight (8) hours each, as a result of the above violation.

(Carrier's File: F-1053.)

(c) Carrier be required now to pay Messrs. L. E. Ferris, C. H. Christensen, T. M. Raap, J. C. Awe, V. T. Lewis, G. W. Stedman, J. M. Hansvold, and M. L. Johnson eight (8) hours each, as a result of the above violation. (Carrier's File: F-1053.)

(d) Carrier be required now to pay Messrs. M. G. Barton, J. H. Spilman, J. L. Schones, M. E. Reeve, D. B. Roundy, M. L. Larson, T. C. Goodier, M. L. Payne, M. D. Collinge, and F. J. Kriesel eight (8) hours each, as a result of the above violation. (Carrier's File: F-1054.)

EMPLOYES' STATEMENT OF FACTS: This is a claim for eight hours' pay on behalf of twenty-two (22) signal employes who lost a day's pay Monday, July 17, 1967, after Carrier abolished their positions account a strike by other railroad employees. It is based on our contention Carrier abolished their positions in violation of the August 21, 1954 National Agreement and the February 7, 1967 Mediation Agreement.

The February 7, 1967 Agreement established its own Disputes Committee to handle disputes arising under that Agreement. The question of whether or not that agreement was violated is being submitted to that Disputes Committee. The question being submitted to this tribunal is whether or not Carrier violated the August 21, 1954 Agreement and, if so, whether or not Carrier should be required to pay claimants for the day's work they lost July 17, 1967.

Each man submitted a claim to Carrier for eight hours' pay for July 17, 1967, this claim being submitted on his individual Form PR-1, General Time

and Distribution Record. Each man received an individual letter of denial from a supervisor on or before August 11, 1967.

At one stage of handling on the property, the men were listed in three separate letters of appeal. They are combined herein, however, because all involve the same issue. Pertinent exchange of correspondence on the property is attached hereto as Brotherhood's Exhibits Nos. 1(b), 1(c), 1(d), 2(b), 2(c), 2(d), 3(b)-(c), 3(d), 4(b)-(c), 4(d), and 5(b)-(c).

There is an agreement in effect between the parties to this dispute, bearing an effective date of September 1, 1949, as amended, which is by reference thereto made a part of the record in this dispute. The August 21, 1954 National Agreement is considered herein as being an amendment to the September 1, 1949 Signalmen's Agreement and is also to be considered a part of this record.

(Exhibits Not Reproduced)

CARRIER'S STATEMENT OF FACTS: For reasons that will be fully explained in CARRIER'S POSITION, it is respectfully submitted that this Division is without authority or jurisdiction to proceed in the disposition of this dispute.

Effective 12:01 A.M. on July 17, 1967 the Shop Craft Organizations effected a work stoppage on this System, complete with pickets, road blocks, etc.

The Carrier, pursuant to the provisions of Article VI of the Agreement of August 21, 1954 (copy of which is attached hereto as Carrier's Exhibit "A"), abolished all positions, the work of which no longer existed or could not be performed because of the work stoppage, by affording each employee affected sixteen hours' advance notice of the abolishment.

Attached hereto as Carrier's Exhibits "B" and "C" are copies of two letters, each dated December 13, 1967 from Mr. S. W. Amour, former Vice President-Labor Relations, to Mr. D. E. Twitchell, General Chairman, setting forth Carrier's position in the instant case. Also attached as Carrier's Exhibit "D" is a copy of Mr. Amour's letter dated February 21, 1968 directed to Mr. Twitchell.

(Exhibits Not Reproduced)

OPINION OF BOARD: The Carrier's argument that the claim should be dismissed because it was also filed with the February 7, 1965 Disputes Committee is without merit. In brief the Special Board of Adjustment No. 605 found that the instant dispute should be decided by the Third Division.

The basic question before us is did the Carrier properly notify Claimants that their positions were abolished. The precise question involved in this claim is whether a written notice is required under the sixteen hours emergency notice prevision emanating from the Agreement of August 21, 1954. This issue has recently been resolved by this Board in Award 17014 (Criswell). The Opinion of the Board in that case states:

"The issue involved in this case is whether Carrier complied with the Agreement when it abolished Claimants' positions through verbal rather than written notice.

"Both parties agree that because of a strike an emergency existed, and that the 16-hour time requirement of Rule 14 of the Agreement was met.

"Section (b) of Rule 14 says:

> 'When regular established positions are abolished, the occupants thereof will be given a minimum of five working days' advance notice in writing, except as provided in Section (c) hereof.

"Section (c) provides for notices in the instant emergency situation:

> '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.'

"In drafting this Agreement the parties provided in the non-emergency abolishment procedure that notice would be given 'in writing.'

"They failed to so when the emergency abolishment procedure was written. We can not conclude, as Claimants believe, that the words 'such advance notice' was intended to require the Carrier to provide employes with written notification in emergency situations as exist in this case; nor do we find Section 14 (d) requires written notice in emergency cases.

"The necessary language to effect written notice in emergency situations could have been included in the Agreement if it had been the intent of the parties. This Board has often held that it can not, through its interpretation, in effect change the Agreement.

"It is noted that the Organization subsequent to this incident asked through Section 6 notice that Section 14 (c) be amended to include the provision 'in writing.' The negotiation of such an insertion would be the proper approach and not through an Award of this Board."

The foregoing award has been held controlling in subsequent **Award 17674** (Ritter), which states:

> "The question of whether or not written notice was required in this instance has been resolved in Award 17014 (Criswell) which held that Sec. (c) of Rule 14 does not require written notice in emergency situations."

The conclusions reached in the foregoing awards are supported by sound principles. The rule contains no explicit provision requiring that the sixteen hour notice be in writing.

The substantial issue in this case, whether oral notice satisfied the sixteen hour emergency notice provisions in the 1954 National Agreement, has recently been resolved by this Board in Award 17014, followed by Award 17674, and these awards should be regarded as controlling.

A careful study of the record indicates that the Carrier did contact the following according to sixteen hour emergency provisions: Messrs. B. J. Lilla, L. E. Ferris, T. M. Reap, J. C. Awe, V. T. Lewis, G. W. Stedman, J. M. Hansvold, M. L. Johnson. The Carrier properly attempted to contact Messrs. C. E. Jones, J. L. Fredrick, L. K. West and M. L. Larson and did eventually reach Messrs. West and Larson. Therefore, their claim is denied.

The record also indicates that C. H. Christensen was given only 11 1/2 hours notice. The Carrier was late in fulfilling the time requirement. Whereas we can establish a partly insufficient notice we cannot establish the clear cause of the delay. We therefore, stipulate that Claimant Christensen is entitled to the amount of time by which his job abolishment notice was abbreviated — four and one-half hours.

The record offers no evidence that Messrs. M. G. Barton, J. H. Spilman, J. L. Schones, M. E. Reeve, D. B. Roundy, T. C. Goodier, M. L. Payne, M. D. Collings and F. J. Kriesel were called or that attempt was made to call them according to the sixteen hour emergency provisions. Therefore, their claim is sustained.

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 violated as indicated.

AWARD

Claim sustained to the extent shown in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Shulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of June 1970.

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