

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Lehigh Valley Railroad Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Article VI of the August 21, 1954 Agreement and Article IV, Section 14 of the Schedule Agreement, when during a strike by crafts other than Signalmen, positions were abolished without sufficient notice and procedures for recall of employees to work after the strike was not properly implemented.

(b) Carrier be required now to pay the following:

T. Vathis	8 hours at \$3.2057	\$25.64
H. McPherson	8 hours at 3.2057	25.64
R. Azzalina	8 hours at 3.2057	25.64
J. Keim	8 hours at 2.7647	22.12
W. Bubick	8 hours at 2.7647	22.12
C. J. Garrett	8 hours at 3.2684	26.14
W. H. Tucker	8 hours at 3.2684	26.14
R. C. Anderson	8 hours at 3.2057	25.64
G. Arnold	8 hours at 3.2057	25.64
John Ciprich	8 hours at 3.2057	25.64
C. Ciprich	8 hours at 3.2057	25.64

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties to this dispute bearing an effective date of July 1, 1942, as amended, which provides, in part:

"ARTICLE IV.

Section 4. When force is reduced the senior men in a class on a seniority district will be retained. Force reductions will not be made, nor will positions be abolished, until the employees affected have been given five (5) days' written notice.

* * * * *

The remaining six (6) claimants:

C. J. Garrett
W. H. Tucker
R. C. Anderson
G. Arnold
J. Ciprich
C. Ciprich

were all notified by telephone of the abolishment of their positions, which they accepted without protest.

Confirmation of the abolishment, in writing, was sent to each employee at his home, but was not received within the sixteen-hour notice period.

Employees now claim written notice was not given by the Carrier within the sixteen-hour period stipulated by the August 21, 1954 Agreement, and that they were not given notice to return to work at their usual starting time on July 18, 1967.

(Exhibits not reproduced.)

OPINION OF BOARD: Due to a national strike by the Shop Craft employees, effective 12:01 A.M., July 17, 1967, the Carrier abolished positions of employees in all crafts on 16 hours' notice under the emergency provisions of the National Agreements of August 21, 1954 and February 7, 1965.

Picket lines were established at 12:01 A.M., July 17, 1967, and although the strike was officially terminated at 9:30 P.M., July 17, 1967, their picket lines were not removed until 11:00 A.M., July 18, 1967. The record is not clear as to the reason for the delay. We can only speculate that this delay was due to the time consumed in transmitting the message through the various echelons of the Organization.

The number of claimants listed in the claim for the purpose of clarification can be divided into two groups, groups A and B.

Group A are those claimants who were notified by telephone that because of the strike, their positions were being abolished. They have submitted a claim for a day's pay on the grounds that although they were orally notified of the abolishments within the 16 hour time limit, they did not receive written notifications within the 16 hour time limitation.

Group B consists of those employees who allege that they were not recalled to duty at the termination of the strike in order of seniority, thus resulting in some junior employees being recalled before senior employees. They, too, demand a day's pay for July 18, 1967.

Insofar as Group A is concerned, the provisions of the Agreement upon which reliance is made by the Organization, requires only that at least 16 hours' notice be given to the employees whose positions are to be abolished. There is no provision or, indeed, requirement that the notice must be in writing. We have so held in many other awards. Hence, that portion of the claim affecting employees in Group A will be denied.

Group B employees base their claim on an alleged violation of Article IV, Section 14, the pertinent portion of which reads:

"Employees laid off by reason of force reduction or reduced to a lower seniority class will be recalled to service or to full positions in the higher seniority class in the order of their seniority. When filling temporary positions, if the senior laid off employee fails to respond or, in the case of an emergency, the senior available laid off employee may be used until the senior laid off employee reports."

We agree with the petitioner that the above cited language requires the recall of employees in the order of their seniority following force reductions. We also submit that the abolishment of positions such as in this dispute is equivalent to a force reduction. However, since the picket lines were not removed until 11:00 A.M., we can find no basis in the Agreement for making it mandatory for Carrier to pay each of those employees in Group B a full day's pay. It is almost indisputable that these employees if called prior to their starting times on July 18, would not have crossed the picket lines. Such a situation, for all intents and purposes in the field of Labor-Management Relations, is practically tantamount to the concept of Judicial Notice in our Court systems. Accordingly, we find that Carrier did violate the aforesaid Article IV, Section 14, and must compensate those employees in Group B from 11:00 A.M. on July 18, 1967 to the end of their tour of duty on that day.

We will deny the claim of those employees in Group A.

We will sustain the claim of these employees in Group B in accordance with the opinion as expressed.

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 in accordance with the Opinion.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1970.

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