Award No. 18116
Docket No. SG-18245

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ERIE - LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie-Lackawanna Railroad Company:

On behalf of Leading Signalmen T. W. Shoemaker, Signalmen M. A. Yetman, V. R. Abbott, D. R. Chess, V. C. Losey, E. B. Mangus, and Signal Helper D. J. Williams for eight (8) hours' pay, Monday, July 17, 1967, account Carrier violated the 16-hour provision of Article VI of the August 21, 1954 Agreement. (Carrier's File: Sig. Item 154.)

EMPLOYES' STATEMENT OF FACTS: Claimants named herein were employes of the signal shop at Meadville, Pa., when this dispute arose, working under the direction of Signal Foreman T. W. Gladys. Their assigned hours were 7 A. M. to noon, and from 12:30 P. M. to 3:30 P. M., five days per week.

At about 10:00 P. M. on July 16, 1967, Mr. Gladys telephone claimants at their homes, advising them their jobs were abolished due to a strike by Shop Craft employes, and that they should not report for work the next day.

About 6 or 6:30 A. M. the next day, Mr. Gladys delivered Bulletin No. 1, which is attached hereto as Brotherhood's Exhibit No. 1.

Under date of July 26, 1967, the Brotherhood's Local Chairman presented a claim for eight hours' pay for each claimant, account Carrier violated the 16-hour advance notice provision of Article VI of the August 21, 1954 Agreement. The General Chairman later contended the men should have been given no less than five working days advance notice as their work continued to exist and could have been performed despite the strike.

As indicated by correspondence attached hereto as Brotherhood's Exhibit Nos. 2 through 11, the claim was subsequently handled to a conclusion on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving satisfactory settlement.

There is an agreement in effect between the parties to this dispute, bearing an effective date of March 1, 1953, as amended, which is by reference made a part of the record in this dispute. The August 21, 1954, and June 5, 1962 National Agreements are also by reference thereto made a part of this record.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: On July 15, 1967, the Shop Crafts System Federation advised that the Erie-Lackawanna Railway Company was not one of the railroads selected for the strike called for July 17, 1967, at 12:01 A. M. However, on Sunday, July 16, 1967, at approximately 4:00 P. M., Carrier was notified by the System Federation that the Erie-Lackawanna was to be included. On learning this, the General Chairmen of the various other crafts were contacted as soon as possible to determine if their members would honor picket lines established by the striking shop craft employes. The General Chairman of the Petitioning Organization could not be located, however, all of the other General Chairmen contacted advised that their employes were duty bound to do so. Based thereon, Carrier was forced to promptly personally notify all employes it could that because of the emergency, positions were annulled effective July 17, 1967.

Picket lines were established by Shop Craft Employes system-wide.

Claim was instituted by the Local Chairman on July 26, 1967, (Carrier's Exhibit "A"), denied, and thereafter handled on appeal up to and including Carrier's highest officer designated to handle such matters (Carrier's Exhibit "B") where it was discussed in conference and denied with denial confirmed on March 15, 1968 (Carrier's Exhibit "C"). Subsequent exchange of correspondence is identified as Carrier's Exhibits "D" and "E."

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants were assigned to the signal shop at Meadville, Pennsylvania, working under the supervision of Signal Foreman T. W. Gladys. Their assigned hours were 7:00 A. M. to noon; and 12:30 P. M. to 3:30 P. M.

Shop Crafts System Federation notified Carrier on Sunday, July 16, 1970 at about 4:00 P.M. that its railroad would be struck beginning July 17, 1967, at 12:01 A. M.

At about 10:00 P. M., July 16, 1967, Foreman Gladys telephoned Claimants at their homes. He informed them that their jobs were abolished due to the strike by Shop Craft employes; and that they should not report for work the next day. The advance notice of abolishment was given, therefore, approximately nine (9) hours prior to it becoming effective.

About 6:00 or 6:30 A. M. on July 17, 1967, Foreman Gladys delivered to Claimants a written bulletin signed by the Chief Signal Engineer which listed their positions, among others, immediately following the statement:

> "Account Strike Emergency Shop Craft Employes, 12:01 A. M. D.S.T., July 17, 1967, **making operation of railroad impractical,** the following positions in Signal Shop, Meadville, Pa. are **abolished** at regular starting time Monday, July 17, 1967:" (Emphasis ours.)

On July 18, 1967, about 2:30 A. M. Foreman Gladys telephoned Claimants notifying them to return to work at 7:00 A. M. that morning.

Organization filed claim alleging that Carrier violated the Agreement by failure to give Claimants timely notification of abolishment of their positions as contractually mandated in Article VI of the August 21, 1954 National Agreement. It makes demand for damages incurred, due to the alleged viola-

tion, for "eight (8) hours' pay, Monday, July 17, 1967," for each of the Claimants.

The proffered defenses of Carrier are: (1) the strike created an emergency which caused it to abolish the positions; (2) "in order for Petitioner to prevail it must show that the Claimants were available for service on the date of the claim and this it manifestly cannot do as the Claimants could not and would not have crossed the picket lines established at each location;" and (3) "the Railroad Retirement Board Legal Department ruled this as a strike embracing all employes and that they were all entitled to unemployment benefits for the day."

Article VI of the August 21, 1954 National Agreement reads in pertinent part:

> "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." (Emphasis ours.)

From the record we find: (1) the strike created an emergency condition; (2) Carrier's operations were suspended in whole or in part: (3) the work of Claimants' positions continued to exist and could have been performed by them on July 17, 1967; (4) Carrier did not give Claimants at least sixteen (16) hours notice prior to abolishment of their positions.

Carrier's defense that the Claimants would not be available for work on July 17, 1967, was founded on a presumption as to what Claimants could have and would have done in the absence of notification of job abolishment. The presumption is without probative value — it is not supported by declaration or overt action by Claimants or the Organization. Therefore, the defense that the Claimants would not have been available for work on July 17, 1967, is without merit.

What findings or actions were made or undertaken by the Railroad Retirement Board in the exercise of its statutory powers is not material or relevant. The Railway Labor Act vests this Board with exclusive statutory jurisdiction to interpret and apply the collective bargaining agreement.

For the foregoing reasons 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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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

CARRIER MEMBERS' DISSENT TO AWARD 18116 DOCKET SG-18245

Article VI of the August 21, 1954 National Agreement provides for force reductions becoming effective upon sixteen hours advance notice to employes affected in the event of flood, snow storm, hurricane, strike, etc. In Awards 17708, 17780, 17958, 17964 and 17989, all of which dealt with strike situations and were furnished the Referee who authored Award 18116, this Division, when interpreting Article VI, held that such force reductions became effective at the expiration of sixteen clock hours from the time notice of reduction was given the employes involved. Award 18116 is in error in allowing compensation to affected employes beyond the expiration of 16 clock hours from the time notice of force reduction was given the employes.

In this instance the Referee who authored Award 18116 has again refused to follow the weight of authority which he so readily followed and espoused in his Award 11788 wherein it was stated, in part:

> "* * * Only if in law and in fact a prior Award finds no support should we reverse it. Certainly, where a provision of an Agreement permits more than one interpretation, we must presume that the Division, in its deliberations, considered all of them before making its selective determination. We should not at a later date, with a different referee participating, substitute our judgment for that in a precedent Award unless we are unequivocally convinced and can find that the prior judgment is without support. To apply any other test would be to foster uncertainty in the Employe-Carrier relationships in derogation of the objectives of the Act."

In the case here involved five prior Awards had decided the issue in a similar manner with none to the contrary. The Referee in Award 18116, however, refused to follow such prior judgments and proceeded without reason to substitute his own judgment.

For the foregoing reason we dissent.

G. C. White
G. C. White

R. E. Black
R. E. Black

P. C. Carter
P. C. Carter

W. B. Jones
W. B. Jones

G. L. Naylor
G. L. Naylor

REFEREE'S ANSWER TO CARRIER MEMBERS DISSENT TO AWARD NO. 18116

In the record made on the property Petitioner's Claim for measure of compensation was not put at issue.

The only reasons given by Carrier in its progressive series of denials of the Claim on the property were that it had not violated Article VI of the August 21, 1954 National Agreement. Thus was framed the sole issue which this Board had jurisdiction to resolve and did resolve in its Award.

Subsequent to the Referee having released to the partisan Members of the Division his proposed Award the Carrier Member of the panel before which argument was made requested re-argument. During that argument, for the first time in the history of the case, he raised issue, without benefit of record support, as to compensation prayed for in the Claim. The finding as to rule violation was not re-argued.

This Board's jurisdiction is confined to the record made on the property.

This Board, by statute, sits as an appellate forum. See, Circular No. 1 "Organization and Certain Rules of Procedure" under the caption "Form of Submission."

Evidence not in the record made on the property may not be introduced before the Board by either party to the dispute. Issues not raised by the parties in the handling of the dispute on the property may not be raised before the Board by either party to the dispute. The authorities supporting the preceding two statements are collected in the Division's Opinion relative to Award No. 14162 On Remand from the United States District Court for the Northern District of Illinois, Eastern Division. See and compare, Second Division Award No. 5981.

The Dissent has no support "in law and in fact." See and compare, quotation from Award No. 18116 in the Dissent.

Respectfully submitted,

John H. Dorsey
JOHN H. DORSEY, REFEREE
NEUTRAL MEMBER OF THE BOARD

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