NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20059
THIRD DIVISION Docket Number CL-20068

Irving T. Bergman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(
(Brooklyn Eastern District Terminal

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7220) that:

1. The Carrier a non struck Railroad Terminal violated the meaning and intent of the Clerks' Agreement especially Rules 10, 24, 48, 50, the February 7, 1965 National Job Stabilization Agreement and Article VII, Section (a) and (b) of the February 25, 1971 Agreement that deals with the elimination of advance notice requirements only in case of emergency conditions as set forth therein, the rule does not apply to other than emergency situations, where a Carrier is not affected by an emergency situation it cannot use this Rule to reduce forces or abolish positions.

2. The Carrier a non struck Railroad Terminal shall pay the employes named at the pro rata rate of each and every day they were held out of service the amount they would have received minus any unemployment benefits they may receive had they worked between July 28, 1971 and August 3, 1971. The following are the employes affected: S. Czujak, S. Ilasi, E. Wohlfort, W. Farrell, A. Muller, C. Bartashunas, J. Buonomo, A. Schapiro, R. Colucci, D. Krocaynaski, A. Lombardo, L. Carrington, T. Tuk, W. Kretzmer, R. Griffith, J. Riley, F. Faliciano, R. Mango, V. Caravano, S. Wasilowski, S. Wright, J. Lingard, F. Rodriquez, C. Lede, J. Gruz, R. Griffin, F. Krysiak, R. Rosado, C. Betcher, R. Lebron, F. Thomas, A. Lebron, F. Rorie, L. Rodriguez, J. Jackson and any whose names were unintentionally omitted from this list.

OPINION OF BOARD: Between July 28, 1971 and August 3, 1971, selective strike action was taken by United Transportation Union members against certain of the Nation's Carriers. This Carrier was not struck but other Carriers which supplied it with interchange cars were shut down. This caused a decline in the number of car arrivals, particularly from the Lehigh Valley Railroad where operations were suspended. The Lehigh Valley float bridge operation, which is one of this Carrier's principal points of interchange, was discontinued for the duration of the labor dispute.

Although it was a non-struck Railroad Terminal, Carrier reduced forces under its Clerical Agreement by approximately thirty-five (35) employees, invoking certain emergency force reduction clauses under that Agreement. Carrier claims that they had license to make such reductions under the terms and

provisions of Article VII of the Clerks' National Agreement dated February 25, 1971. The Clerks claim that inasmuch as the Carrier was a non-struck Railroad terminal they could not avail themselves of the provisions of Article VII of the National Agreement.

Article VII, entitled "Force Reduction Rules", provides as follows:

> "Insofar as applicable to the employees covered by this Agreement, Article VI of the Agreement of August 21, 1954 is hereby amended to read as follows:
>
> (a) Rules, agreements or practices, however established, that require advance notice to employees before abolishing positions or making force reductions are hereby modified to eliminate any requirement for such notices under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire or labor dispute other than as covered by paragraph (b) below, provided that such conditions result in suspension of a carrier's operations in whole or in part. It is understood and agreed that such force reductions will be confined solely to those work locations directly affected by any suspension of operations. It is further understood and agreed that notwithstanding the foregoing, any employee who is affected by an emergency force reduction and reports for work for his position without having been previously notified not to report, shall receive four hours' pay at the applicable rate for his position. If an employee works any portion of the day he will be paid in accordance with existing rules.
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> (b) Rules, agreements or practices, however established, that require advance notice before positions are abolished or forces are reduced are hereby modified so as not to require advance notice where a suspension of a carrier's operations in whole or in part is due to a labor dispute between said Carrier and any of its employees."

Our reading of Article VII quoted above leads us to conclude that a Carrier can abolish positions and make force reductions under specified emergency conditions, including labor disputes, if such conditions result in the suspension of Carrier's operations in whole or in part. In effecting such emergency force reductions, the Carrier must limit the scope of the reduction to a work location directly affected by the suspension of operations. With respect to emergency force reductions arising from a labor dispute, a distinction is made between labor disputes involving Carrier's own employees, and labor disputes involving individuals not in the hire of the Carrier.

This distinction does not address itself to whether or not the Carrier can avail itself of the right to reduce forces or abolish positions but addresses itself only to the type of notice that is required in the defined emergency. Under paragraph (a), if the Carrier is a non-struck Carrier and its operations are suspended in whole or in part as a result of a labor dispute, it must notify the employe whose position is abolished or who is affected by a force reduction prior to reporting for work. If the employe is not so notified not to report he is entitled to receive four (4) hours pay. Under the provisions of paragraph (b), if the labor dispute causing the suspension of a Carrier's operations in whole or in part is between said Carrier and any of its employes, the requirement that an employe be notified not to report for work prior to the starting time of his assignment is not necessary, and if an employe does report the Agreement does not require that he receive the four (4) hours pay applicable to a non-struck Carrier.

It is our holding that the distinction between paragraphs (a) and (b) of Article VII of the February 25, 1971 Agreement deals with the notice requirements prior to effecting emergency force reductions in cases of labor disputes, and not to the issue of whether or not a Carrier can make such emergency reductions when their operations are suspended in whole or in part as the result of a labor dispute affecting their operations. In the instant case, the Carrier has demonstrated that their operations were affected by a labor dispute. Moreover, they have demonstrated that the force reductions they made were confined to the work locations directly affected by the suspension of operations.

The Organization has argued that being a non-struck Carrier the Terminal Company was unable to avail itself of the Rule. We do not think that the language of the Rule supports Petitioner's argument. Failing to offer any evidence contradicting Carrier's evidence that an emergency did exist, we will deny the claim.

FINDINGS: The Third Divsion 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

The Claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A W Paulus
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1973.