

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20220
Docket Number MW-20188

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Norfolk and Western Railway Company (Lake Region)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it temporarily reduced forces on the Nickel Plate, Lake Erie and Western and Clover Leaf Districts by furloughing a number of machine operators, machine operator helpers, roadway equipment shop laborers, welders, welder helpers and miscellaneous equipment maintainers at work locations not directly affected by the coal miners' strike (System File MW-BVE-71-25).

(2) Each machine operator, machine operator helper, roadway equipment shop laborer, welder, welder helper and miscellaneous equipment maintainer affected by the temporary force reduction be compensated for all wage loss suffered.

OPINION OF BOARD: Because of a coal miners' strike in the fall of 1971, the Carrier cut back the work force throughout its system. Beginning on October 14, 1971, and with advance notice of five working days, the Claimants' positions were abolished. Some positions were restored within six days after abolishment and the majority were restored by December 10, 1971. The Employees contend that the Claimants' positions were not in work locations directly affected by the strike and, hence, their abolishment was in violation of Article VI, February 10, 1971 National Agreement, which reads as follows:

"ARTICLE VI - EMERGENCY FORCE REDUCTION RULE

(a) Rules, agreements or practices, however established, that require advance notice before positions are temporarily abolished or forces are temporarily reduced are hereby modified so as not to require advance notice where a suspension of an individual carrier's operations in whole or in part is due to a labor dispute between such carrier and any of its employees.

"(b) Except as provided in paragraph (a) hereof, rules, agreements or practices, however established, that require advance notice to employees before temporarily abolishing positions or making temporary force reductions are hereby modified to eliminate any requirement for such notice under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire, or a labor dispute other than as defined in paragraph (a) hereof, provided that such conditions result in suspension of a carrier's operations in whole or in part. It is understood and agreed that such temporary 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 such 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." (Emphasis added)

In urging that the underlined portion of Article VI was violated, the Employees' Submission states that:

".... the coal mines affected by the strike were not served by the Carrier party to this Agreement and were not on the property covered by this Agreement. The Carrier's operations on the property covered by this Agreement were not suspended in whole or in part. Thus, it naturally follows that the work locations of the claimants' positions were not 'work locations directly affected by any suspension of operations.' The Carrier did not confine the temporary abolishment of positions solely to work locations directly affected and, therefore, it is in violation of Article VI (b) of the February 10, 1971 National Agreement."

The Employees contend, in addition, that the Carrier should not be permitted to escape the restrictive provisions of Article VI under the guise of giving five working days advance notice before abolishing the positions. However, the Carrier says the advance notice of five working days placed its action in conformity with Article III, June 5, 1962 National Agreement, which reads as follows:

"ARTICLE III - ADVANCE NOTICE REQUIREMENTS

Effective July 16, 1962, existing rules providing that advance notice of less than five (5) working days be given before the abolishment of a position or reduction in force are hereby revised so as to require not less than five (5) working days' advance notice. With respect to employees working on regularly established positions where existing rules do not require advance notice before such position is abolished, not less than five (5) working days' advance notice shall be given before such positions are abolished. The provisions of Article VI of the August 21, 1954 Agreement shall constitute an exception to the foregoing requirements of this Article."

After a careful review of the foregoing, and the whole record, we conclude that the claim must be dismissed for lack of supporting evidence. The Employes' statements on the property, and in their Submission, are addressed to the single conclusion that the work locations of Claimants' positions were not directly affected by the strike. However, the Employes have not carried their burden to support this conclusion by facts or explanation and the Carrier has made no admission which satisfies such burden. We also note that the Carrier did give the advance notice of five working days as provided by Article III of the June 5, 1962 National Agreement. We shall dismiss 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 the Agreement was not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1974.