NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20996
Docket Number CL-20998

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Lehigh and Hudson River Railway Company
John G. Troiano, Trustee

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7765) that:

1. Carrier violated Article VII of Mediation Agreement Case No. A-8853, Sub. No. 1 dated February 21, 1971, when it abolished the position of Car Record Clerk, occupied by Warren L. Blakney on May 15, 1974 and that:

2. Claimant Warren L. Blakney be compensated for all lost time at the pro rata rate from May 15, 1974 through May 31, 1974.

OPINION OF BOARD: On May 8, 1974 the Penn-Central bridge at Poughkeepsie, N.Y. was destroyed by fire, putting the bridge out of service. As of that date the Maybrook, N.Y. interchange was closed and the Penn Central instituted radically different routing via Carrier's interchange at Phillipsburg, N.J., which is currently the route. As a result of the change, Carrier claims that there was an immediate suspension of some of its operations and certain positions were abolished. On May 13, 1974 Carrier abolished Claimant's position effective May 15, 1974; the position was reinstated June 3, 1974. Carrier presented evidence of a reduction in traffic volume following the fire. The record indicates that during the period from May 15th to June 3, 1974 a Traffic Clerk was assigned half time to Claimant's work; the Traffic Clerk was retained to assist Claimant from June 3 to June 17, 1974. Carrier stated that Claimant was recalled "....because the accounting work in his department had been allowed to back up during his absence, and not because there was a resumption of the earlier normal level of work."

Petitioner states that there was no emergency since the fire would have to have occurred on Carrier's property rather than on Penn Central property to conform to the terms of the February 25, 1971 Agreement. It is argued that there was no shut-down in whole or in part on the day of the fire, May 8, 1974. The reduction in the volume of traffic, it is argued, did not in itself constitute an emergency. Since the position in question was abolished on May 15th it required formal advance notice - five days - in accordance with the normal reduction in force rule. However, it is concluded, since there was no contractual

basis for the job abolishment in the first instance, Claimant is entitled to compensation for all lost time.

Carrier asserts that the fire resulted in a suspension in part of its operations and clearly was an emergency condition as contemplated by the February 25, 1971 Agreement. Carrier also states that there had been a previous force reduction as a result of a strike on the Penn Central, which paralleled the instant situation and was also an emergency. Carrier argues that the provisions of Article VII of the February 25, 1971 Agreement were expressly designed to afford relief to Carriers from emergencies such as that caused by the fire herein. Carrier argues that even if it should be found that the Carrier proceeded improperly under Article VII, the Claimant would only be entitled to recover an amount that would have accrued to him had the normal five days notice been given him.

Article VII (a) of the February 25, 1971 Agreement provides:

> "(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."

There have been a number of awards by various Divisions of the N.R.A.B. which have dealt with emergencies created by labor disputes on connecting lines or in some instances in other industries. In none of those situations did the Boards discount the emergencies since the work stoppages did not occur on the Carrier involved in the disputes. We see no reason to depart from the earlier reasoning since the prime consideration is the suspension of Carrier's operations in whole or in part as a result of the condition - in this case the fire.

In this dispute the critical question is whether there was a suspension of Carrier's activities in whole or in part as a direct result of the fire. First we have the unusual fact that the positions were not abolished until a week after the fire took place. Secondly, the reduction in the traffic claimed as the major factor by Carrier was 17% for the month of May, 13% less than April in June, and down 44% after a seven month period. The traffic reduction has, according to Carrier, continued to the time of submission; can this be construed as a continuing emergency - or a reduction in business caused by a number of factors? Finally, the fact that the work load of Claimant apparently did not decrease during the period of the abolition of his job adds to the incredulity. On balance, under the circumstances herein, we are not convinced that there was indeed an emergency coming under the provisions of Article VII supra. The fact is that Penn Central obviously chose to use a different interchange point, thus avoiding rebuilding or repairing the bridge damaged by the fire; this business decision of the connecting Carrier does not make for an emergency, even though it could result in a loss of traffic.

Petitioner has alleged that the job should not have been abolished under any circumstances and Claimant is entitled to compensation for the entire period. We can find no rule or other support for this position and it must be rejected. Therefore, we find that Claimant should be awarded compensation in such sum as would have accrued to him had the normal five day notice period been complied with by Carrier.

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.

A W A R D

Part 1 of claim sustained; part 2 of claim sustained to the extent indicated above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Panka
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March 1976.