

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25344
Docket Number CL-25210

George S. Roukis, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Houston Belt & Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9813), that:

1. Carrier violated the Clerks' Rules Agreement, when it failed and refused to properly compensate Guarantee Extra Board Clerk A. S. Barboza for the month of September 1982, as required by Rule 24, Paragraph (c)-(1).

2. Carrier shall now be required to compensate Clerk A. S. Barboza an additional four (4) days guarantee pay for the month of September 1982, as provided for in the rule.

OPINION OF BOARD: The pivotal question in this dispute is whether Claimant is entitled to four (4) additional days guarantee pay for the period running from September 19, 1982, through September 22, 1982. Claimant is regularly assigned to the Carrier's Crew Callers Extra Board protecting vacancies at the Rusk Avenue Crew Callers office; and pursuant to Agreement Rule 24, Paragraph (c)-(1), he is guaranteed sixteen (16) days pay per month for his services protecting vacancies. The parties are in agreement regarding the employment guarantee, but differ as to its application during the time Claimant's Organization honored a picket line established by another Employee Organization. The Brotherhood of Locomotive Engineers (BLE) commenced a nationwide strike which affected Carrier's operations.

In defense of his petition, Claimant argues that he is entitled to eight (8) hours pay for each such day that Carrier did not call him for work during the sixteen (16) day guarantee period. He asserts that the only exception to the Rule's application is when an employee, by his own volition, fails to respond to a required Carrier initiated work call, or lays off work at the time he is given such a call. He avers that Carrier had not called him during the claimed period, despite his being marked off for work calls for the entire month of September, 1982. He maintains, in effect, that since he had not been called for work, there was no way he could have walked off the job to honor the picket line.

Carrier argues that the extraordinary nature of the strike, coupled with the Brotherhood of Railway, Airline and Steamship Clerks (BRAC) decision to honor the BLE picket line, necessitated the suspension of all Extra Boards. It avers that 170 clerical employees, including the Crew Callers, voluntarily elected to observe the BLE picket line, and thus, disclaims any responsibility for Claimant's loss of four (4) days work. It maintains that it is sheer presumption to assume that Claimant was readily available for work in view of his implicit Union membership obligations; and asserts that he failed to provide evidence that he was either available or willing to cross the picket line. It cited several Third Division Awards dealing with picket line obligations and emphasized, in particular, the pertinence of Third Division Award No. 19836. In that Award, the Division referenced in part, an assessment of picketing provided by Referee Anrod in Second Division Award No. 4494. It reads:

"Picketing is a method of social control conventionally used by unions in furtherance of a labor dispute. Specifically, unions regard picketing as an indispensable adjunct of strikes because the successful outcome of a strike largely depends on the success of strikers in dissuading employees from entering the premises to work.... It is a fact commonly known throughout the industrial world as well as throughout the jurisdiction in and for which this Board setting that unionists do not generally cross a picket line established around a strike-bound enterprise as a manifestation of union solidarity and unity of action. This fact is indisputable and beyond question."

(See also Third Division Award Nos. 11102, 20427, 20607, 16746; First Division Award No. 22350 and Second Division Award Nos. 64352 and 6435.)

In our review of this case, we agree with Carrier's position. While Rule 24, Paragraph (c)-(1) provides a sixteen (16) day work guarantee and Carrier is obligated to initiate work calls at the pain of compensatory default, the conditions under which this Rule is operative certainly do not contemplate a situation where a Union honors the picket line of a sister Employe Organization. To be sure, there are distinctions between regularly assigned employees and Extra Board employees who like Claimant are called to protect work, but as Union members drawing their benefits, seniority and employment status from the same Collective Bargaining Agreement, their obligations and sentiments must inevitably flow to the same Organizational protective source. Since an atypical situation was created by BRAC's decision to honor the BLE's picket line and 170 clerical employees, including Crew Callers, observed this officially sanctioned supportive action, it would be most inappropriate to deviate from the Board's past judicial standards. Whether the Organization itself is on strike or observing as a show of solidarity the picket line of another Organization is without conceptual distinction since the decision not to cross the picket line is Organizationally determined. In the instant case Carrier was not able to carry on in normative fashion its routine customary operations; and to assume, under these circumstances, that Carrier had any legitimate reason to expect Claimant to act differently from the other Clerks who observed BRAC's decision, especially where the cohesiveness of Organizational unity is an integral requirement of successful picketing, is palpably unwarranted. In the absence of evidence that Claimant was in fact ready and willing to work during this unusual time, we must follow the logic set forth in predecessor Board decisions and accept the defensible premise that Claimant would have honored his Organization's decision not to cross the BLE picket line.

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

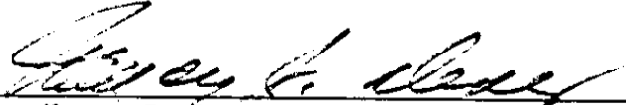
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1985.