Award No. 245
Case No. CL-48-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
and
Chesapeake and Ohio Railway Company

QUESTIONS AT ISSUE:

1. Was the situation which existed at the Carrier's Newport News, Virginia Terminal on January 31, 1969 not an "emergency condition" as that term is used in Section 4 of Article 1 of the Agreement of February 7, 1965?

2. If the answer to Question 1 is in the affirmative, shall the Carrier now be required to compensate all employes for any loss sustained because of the abolition of positions, hereinafter listed, on sixteen hours advance notice?

OPINION OF BOARD: On December 21, 1968, the Longshoreman's Union struck all Atlantic and Gulf Ports, including Newport News, Virginia--the facilities involved herein. Despite the strike, Carrier employees continued to perform their tasks by storing in various buildings located on the Piers, the export merchandise which continued to arrive. Prior to the date in question herein, a number of warehouse buildings were completely stacked with merchandise and, therefore, some clerical positions were previously abolished.

However, on January 31, 1969, a large export shipment unexpectedly arrived and all available storage space disappeared. At this sudden turn of events, pursuant to the provisions of Article I, Section 4, of the February 7, 1965 Agreement, the Carrier gave the sixteen hours advance notice and reduced its forces. Thereafter, the Organization filed the instant claim on behalf of the various claimants whose positions were abolished. In essence, the Organization contends that the Carrier could not invoke the provisions of Article I, Section 4, of the February 7, 1965 Agreement, inasmuch as the alleged emergency only consisted of a lack of available storage space.

In an effort to reach the crux of the instant dispute, we are required to analyze the pertinent portion of Article I, Section 4, hereinafter quoted:

> "Notwithstanding other provisions of this Agreement, a carrier shall have the right to make force reductions under emergency conditions such as flood, snowstorm, hurricane, earthquake, fire or strike, provided that operations are suspended in whole or in part and provided further that because of such emergencies the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed. Sixteen hours advance notice will be given to the employees affected before such reductions are made."

Thus, the Organization argues that a "strike---may or may not cause an emergency." It depends upon whether it creates an "unforeseen set of circumstances, an exigency, a critical and sudden occasion." The Carrier, in turn, argues that not only was an emergency condition created by the strike, but that it met the provisos thereto--operations are suspended in whole or in part and the work no longer exists or cannot be performed. Consequently, Section 4, specifically grants it the right to reduce forces on the condition that the sixteen hours advance notice is given.

We would agree that under the language of Article I, Section 4, of the February 7, 1965 Agreement, an emergency condition does not arise automatically upon the happening of one of the events enumerated therein. The Section also describes the conditions which must prevail, i.e., the work no longer exists or cannot be performed and operations are suspended.

Hence, when the Longshoremen strike initially commenced on December 21, 1968, the Carrier did not utilize the provisions of Article I, Section 4. It was not until January 31, 1969, approximately five weeks thereafter, that it invoked the right granted under the February 7, 1965 Agreement. Can it truly be argued that the strike was not the proximate cause for the disappearance of the available work?

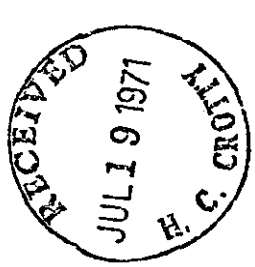
In this regard, we cite our Award No. 123, wherein we held that a partial reduction in a plant's operation did not comply with the emergency conditions specifically detailed in Section 4. In the instant dispute, however, we find each condition contained therein was met by the Carrier. In effect, the Organization seeks to include a requirement that immediately upon the occurrence of a strike and only then, may the Carrier invoke the provisions of Section 4.

In our view, all the requirements must be complied with and as occurred in the instant situation, an interval of time may elapse during which work may be performed without hindrance, despite the existence of a strike.

It is, therefore, our conclusion that under the facts prevalent herein, the Carrier did not violate the Agreement by reducing forces upon giving the required sixteen hours notice.

AWARD

The answer to question (1) and (2) is that an emergency condition existed on January 31, 1969; and the Carrier is not required to compensate employees for any loss sustained.



Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
June 9, 1971