BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
AND
NORFOLK & WESTERN RAILWAY COMPANY

Case No. 74

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

1. The Carrier violated the Agreement when it temporarily reduced forces on the Fort Wayne-Chicago and Chicago Seniority District by furloughing a number of laborers, laborer-drivers, machine operators, a watchman, and welder helper at work locations not directly affected by the coal miner's strike. (Files MW-CGO-78-2 and MW-FTW-78-2)

2. Laborers N. Rosenbaum, S. Milburn, H. Duran, P. James, R. Boyd, A. Campuzano and E. G. Douglas; Laborer-Drivers D. Shepherd and R. J. Cruse, Jr.; Machine Operators R. Conway and M. E. Constable; Watchman C. H. Haupert and Welder Helper F. C. Shepard each be compensated for all wage loss suffered beginning December 15, 1977.

FINDINGS:

On February 13, 1978, a claim was filed by the Organization on behalf of certain laborers, laborer-drivers, machine operators, a watchman, and welder helper on account that the Carrier violated the provisions of Article VI, Section (B) of the February 10, 1971, National Agreement when on December 16, 1977, and subsequent thereto, the Carrier furloughed said employees who were covered under the provisions of the parties' effective working agreement dated February 1, 1951, because of a coal miner's strike and failed and refused to confine the force reduction to those work locations directly affected by a

suspension of work by the coal miner's strike which began on December 6, 1977.

On March 31, 1978, the Carrier replied by stating that the Claimants were not furloughed under the emergency force reduction provision (Article VI, Section (B)), but were furloughed under the provisions of Article III of the June 5, 1962, National Agreement. The Carrier contended that the emergency force reduction rules do not necessarily preclude the use of regular five-day notice rules of the current agreement in making furloughs and, thus, no rules were violated. The Carrier, hence, denied the claim of the Organization, and this matter came before this Board.

This Board has thoroughly reviewed the record in this case, and we find that the Organization has not met its burden of proof that the Carrier violated the agreement. The record reveals that the job abolishments were made under the provisions of the June 5, 1962, National Agreement, which required a five-day working notice. The Carrier gave that five-day working notice that the jobs were going to be abolished permanently. The job abolishments were based upon a reduction in business, which was in part due to the coal miners' strike.

The Organization has argued that the job abolishments were temporary force reductions made pursuant to Article VI, Paragraph (b), and therefore could only be made at locations directly affected by the coal miners' strike. The Organization then argues that the emergency force reduction rule must be applied,

and the normal job abolishment rule ignored.

However, a thorough review of the record indicates that the Carrier utilized the job abolishment rule from the 1962 National Agreement and gave the Organization the required five-working-day notice of its intention to do so. The record reveals that although the furloughs were in part due to the coal miners' strike, they were not temporary in nature. Consequently, the Organization has proven no violation of the 1971 National Agreement or any of the rules contained therein. This Board must find that the claim will be denied.

AWARD:

Claim denied.

PETER R. MEYERS
Neutral Member

Carrier Member

Organization Member

Dated: April 29, 1991