

BEFORE
PUBLIC LAW BOARD NO. 405

Carrier's File: D-6757
Organization's File: 8-21-McArthur

AWARD NO. 116
(Case No. 194)

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees on the St. Louis-San Francisco Railway Company, that:

1. Carrier violated the terms of the Agreement between the parties when on July 30, 1971 it abolished clerical relief Position No. 5 at Tulsa without proper notification to the incumbent thereof.
2. Carrier shall compensate Mr. Daniel F. McArthur for one day's pay (8 hours) on each date of August 1 and 2, 1971, at the rate of Relief Position No. 5.

JURISDICTION OF BOARD:

The jurisdiction of this Board is stated in its Award No. 1. That statement is incorporated herein by reference thereto.

OPINION OF BOARD:

In October, 1959, the United Transportation Union served Section 6 notices nationally. In July, 1971, after considerable negotiation,

AWARD NO. 116
(Case No. 194)

Page 2

the UTU announced selective strikes against three railroads included in the notices, and did so strike.

The UTU further announced strike dates for other railroads, including August 11, 1971, for the Frisco. Others were scheduled for such action July 24, July 30 and August 6.

With the announcements, patrons began finding other means of transportation for goods. When the initial strike was effected, this Carrier's daily carloading and transit business was curtailed. Six of Carrier's scheduled trains were annulled and two consolidated by July 30, 1971.

We are told that 32 Switch Engineers were cut off, five Hostlers, 159 Firemen and 35 Clerks.

Claimants are included in this group. Nationally, agreement was reached at 12:01 a.m., August 2, 1971, with operations thereafter returning to normal.

The Organization contends that Rule 21, Section (a) of the Agreement supports its position that the Claimants herein were not properly notified:

"When forces are reduced or positions are abolished seniority rights shall govern. When a regular position is abolished not less than five working days' advance written notice shall be given to the incumbent of the position which is to be abolished, and copy furnished General Chairman and Local Chairman except that not more than sixteen hours' such advance notice will be required under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike, provided the Carrier's operations are suspended in whole or in part and provided further that because of such emergency 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 reduction no longer exists or cannot be performed."

AWARD NO. 116
(Case No. 194)

Page 3

The February 25, 1971, National Agreement, Article VII, is also cited:

"(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 disputes 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...

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

We are convinced that the Carrier's operations were suspended "in part." Granted, this Carrier was never actually in a situation of having its UTU employees off their jobs on strike, but it was just as directly affected. Because of a labor dispute between the Carrier and its employees, parties to a national dispute, its operation was curtailed, suspended in part.

We are not convinced that the work to which Claimants were assigned did exist, but, rather, disappeared because of the labor dispute and resultant suspension.

FINDINGS:

Public Law Based No. 405, upon the whole record and all the evidence, finds and holds:


AWARD NO. 116
(Case No. 194)

Page 4

1. That Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;
2. That this Board has jurisdiction over the dispute involved herein; and
3. That the Agreement was not violated.

AWARD

Claim denied.

John Criswell, Chairman
Neutral Member

J. A. Thompson, Carrier Member



R. O. Norton, Employee Member

Dated at Springfield, Missouri, this 4th day of October, 1973.