

PUBLIC LAW BOARD 5247

PARTIES)
TO)
DISPUTE)

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.

I. QUESTIONS AT ISSUE

According to the Organization (Org. Submission at 19), the questions at issue in this case are as follows:

1. Whether the Carrier's August 27, 1990 invocation of a strike injunction from the Federal District Court for the Northern District of California before which it argued that its employees have a contractual obligation to cross picket lines and as a result of which such employees were required to cross a picket line of another organization at the Richmond Terminal in Richmond, California under threat of discipline or contempt of court proceedings violated the employees' contractual right to honor the picket lines of others.

2. Whether the Carrier violated the employees' agreement rights when it obtained injunctive relief adverse to the employees' interests by claiming that its agreements require employees to cross another union's picket lines when the agreements contain no such provisions.

3. If the answer to Issue 1 or 2 is in the affirmative, whether the carrier should immediately post a notice informing all employees at the Richmond Terminal and its facilities that 1) there is no requirement in any express or implied agreement with the organizations who represent employees working at the Richmond Terminal requiring said employees to cross any picket line which may be established by any labor organization or group of employees at any of the carrier's facilities; 2) the carrier recognizes that employees have the right to honor such picket lines; and 3) the carrier pledges that it will not interfere with those rights in the future.

According to the Carrier (Car. Submission at 1), the question for resolution is:

Did the Carrier's actions in obtaining a temporary restraining order under the Railway Labor Act, prohibiting its employees from honoring stranger picket lines unlawfully established by Teamsters Local 315 at Carrier's Intermodal Terminal Facility, Richmond, California, on or about August 24, 1990, violate the parties' collective bargaining agreement?

II. FACTS

The Carrier operates a rail terminal in Richmond, California. Prior to June 30, 1990 Santa Fe Terminal Services, Inc. (a subsidiary of the Carrier) performed the loading and unloading of intermodal freight at Richmond Terminal. International Brotherhood of Teamsters Local 315 represented the employees of Santa Fe Terminal Services under a collective bargaining agreement.

On June 30, 1990, the Carrier discontinued use of Santa Fe Terminal Services at Richmond Terminal and, effective July 1, 1990, engaged Piggyback Services, Inc. to perform the loading and unloading of intermodal freight.

On July 2, 1990, the IBT commenced picketing Piggyback Services at Richmond Terminal. The dispute be-

tween the IBT and Piggyback Services centered around Piggyback Service's alleged failure to hire the former Santa Fe Terminal Services employees.

Initially, the IBT picketing was confined to reserve gates established by the Carrier for Piggyback Services, its employees, customers and suppliers. However, the IBT expanded its picket lines beyond the reserve gates. On or about August 24, 1990, IBT pickets were placed at points where the Carrier's employees were located. The Carrier's employees then honored the IBT picket lines and ceased working thereby affecting the Carrier's operations at Richmond Terminal.

On August 25, 1990, the Carrier filed unfair labor practice charges with the National Labor Relations Board alleging the IBT engaged in a secondary boycott seeking to force the Carrier to cease doing business with Piggyback Services in violation of Section 8(b)(4) of the National Labor Relations Act, as amended.

On August 27, 1990, the Carrier sought and obtained a temporary restraining order for the Federal District Court on an *ex parte* basis.¹ In order to obtain the temporary restraining order, the Carrier relied upon language in the Agreement

concerning the duty of employees to report to work as assigned; the obligation to arbitrate disputes and various safety and general rules. See Orgs. Exhs. 1 at ¶9; 2 at ¶24. The temporary restraining order enjoined the Carrier's employees who were members of the Organization as well as members of other participating rail unions from honoring the IBT's picket lines and further directed the participating rail unions to instruct their members to cross the IBT picket lines or face discipline under the respective unions' constitution and bylaws. The unions were specifically directed to distribute a notice to their members stating (Orgs. Exh. 7):

1. You are hereby directed immediately to cross all picket lines at any facility of ATSF; to cease all participation and refusals to report to work for ATSF or in any other interruption or interference with ATSF's normal and efficient operations; and to carry out your normal activities for ATSF and to report to work at ATSF as scheduled.

2. Disciplinary proceedings under the Union constitution will be promptly instituted against any Union member who violates this directive.

As did members of the other participating rail unions, the Organization's members then crossed the IBT's picket lines and returned to work.²

On August 29, 1990, the Carrier requested a conference with each of the rail unions having members employed at

¹ The named defendants were the BLE, UTU, TCU, Firemen & Oilers, IBEW, IAM, and BMW. *The Atchison, Topeka and Santa Fe Railway Co., v. Brotherhood of Locomotive Engineers, et al.*, C 90 2452 (N.D. Calif.).

² According to the Organization, six members of the Organization crossed the picket lines (BLE Exh. E) and did so under protest.

Richmond Terminal on the theory that the refusal of the employees to cross the picket lines violated the various agreements.

Also on August 29, 1990, the IBT removed its pickets at Richmond Terminal.

On August 31, 1990 the Carrier withdrew its request for a conference because "the primary dispute between the contractor and the Teamsters union has been settled, and the secondary pickets have been removed" which, in the Carrier's opinion, "renders the issue moot." BLE Exh. B. Also on that date, a proposed order vacating the temporary restraining order was filed with the Federal Court asserting that "the primary labor dispute between Piggyback Services, Inc. and Teamsters Local 315 was settled".

The Court signed the order vacating the temporary restraining order on September 4, 1990. Orgs. Exh. 5B. The order also stated that the lawsuit was voluntarily dismissed by the Carrier. *Id.*³

The claim in this case was filed on October 22, 1990 (BLE Exh. C) alleging that in seeking the temporary restraining

order in the Federal Court the Carrier "improperly deprived it's [sic] employees at the Richmond Terminal facility of their statutory and contractual rights to honor picket lines established by the International Brotherhood of Teamsters"

III. DISCUSSION

In short, the facts show that the Carrier sought and obtained a temporary restraining order from the Federal Court when its employees honored picket lines at the Richmond Terminal established by the IBT stemming from a dispute between the IBT and a contractor of the Carrier. As part of the temporary restraining order, the Organization was directed to instruct its members to cross the IBT's picket lines or else face internal union discipline. Claim was filed after the picket lines were removed, the restraining order vacated and the lawsuit dismissed.

The October 22, 1990 claim (BLE Exh. C) reads as follows:

Please consider this letter as a grievance and claim on behalf of this Organization and the employees we represent that beginning on August 27, 1990 and ending on August 31, 1990, the Carrier improperly deprived it's [sic] employees at the Richmond Terminal facility of their statutory and contractual right to honor picket lines established by the International Brotherhood of Teamsters (IBT).

On August 27, 1990, the Carrier filed a complaint with the United States District Court for the Northern District of California against this Organization and others which represent Carrier em-

³ The unfair labor practice charges filed by the Carrier against the IBT continued. By order of an administrative law judge dated August 7, 1991 as modified by the NLRB on March 6, 1992, the NLRB found that the IBT engaged in secondary boycott violations of Section 8(b)(4) of the NLRA. *The Atchison, Topeka and Santa Fe Railway Company*, 306 NLRB No. 118 (1992). Orgs. Exh. 6.

ployees at the Carrier's Richmond Terminal facility, asserting that there is an implied agreement between this Organization and the Carrier which requires employees to cross picket lines established by any organization other than this Organization and prohibits this Organization from authorizing or instructing its [sic] members to honor such a call for aid. Based upon that erroneous assertion of a minor dispute over this nonexistent implied contract, the Carrier obtained a Temporary Restraining Order from the District Court without giving this Organization a fair opportunity to refute that erroneous assertion. After obtaining the restraining order, the Carrier informed our members that they must cross the IBT's picket lines and, if they did not, they would be disciplined, as well as held in contempt of court. We submit that the Carrier's actions were contrary to our agreements.

There is no contract, express or implied, between this Organization and the Carrier that requires our members to cross any picket line at any Carrier facility, or that prohibits this Organization from authorizing a "sympathy strike" in aid of any other organization. Moreover, no such prohibition against honoring a picket line can be found to exist here, for Section 2 Eighth of the Railway Labor Act provides that the protections given by Section 2 Fourth of the Act, guaranteeing employees an absolute right to refuse to report for work in response to any peaceful call for such aid by other employees, "are made a part of the contract of employment between the Carrier and each employee."

The Carrier's improper reliance upon a contractual requirement which does not exist, and its [sic] abrogation of the employees' statutory and contractual rights to honor picket lines, has injured the employees whom this Organization represents. Accordingly, this Organization insists that the Carrier post a notice at all of its [sic] facilities, and send the same notice by certified mail to all employees represented by this Organization who work at the Richmond Terminal, stating that there

is no requirement in any express or implied agreement with this Organization requiring employees to cross any picket line which may be established by any labor organization, or by any other "person involved in a labor dispute," at any of the Carrier's facilities. That notice must also state that the Carrier recognizes that employees have statutory and contractual rights to honor such picket lines and that the Carrier pledges that it will not interfere with those rights in the future.

In light of the fact that the temporary restraining order was vacated and the Federal Court action was dismissed, the threshold question in this matter is whether the dispute is moot. Upon consideration, we find that it is.

There is no live dispute before us.
See First Division Award 17064:

We think the function of this Board is the adjustment of actual rather than potential and hypothetical claims.

For all practical purposes, insofar as these parties are concerned, when the temporary restraining order was vacated after the IBT removed its picket lines at Richmond Terminal, the dispute ended. Stripped to its essence, in this claim the Organization now seeks an advisory opinion concerning future similar actions by the Carrier. That conclusion is evident from the relief sought in the claim. *See BLE Exh. C.* The notice sought by the Organization to be issued by the Carrier "must also state that the Carrier recognizes that employees have statutory and contractual rights to honor such picket lines and that *the Carrier pledges that it*

will not interfere with those rights in the future" [emphasis added]. That conclusion is further evident from a reading of the Organization's statement of the issues, particularly Issue No. 3 which seeks the same kind of notice. See Org. Submission at 19 and *supra* at I. See also, Org. Submission at 5-6 ("...[T]his issue will arise again and it is important that it be resolved so that the carrier does not in the future prevent its employees from exercising their statutory and constitutionally protected rights ..." [emphasis added]).

Here, no employees were disciplined for honoring the IBT's picket lines.⁴ No other *specifically stated* contractual rights under the Agreement have been shown to have been violated by the Carrier's actions of filing a lawsuit, obtaining a temporary restraining order and then seeking to dissolve the restraining order and dismissing the suit. It may be that the Organization's arguments concerning the right of the Carrier's employees to honor other unions' picket lines are legally and contractually correct. But it is a long standing doctrine in this industry (as in the courts) that cases must be ripe for adjudication and not hypothetical. This is

a hypothetical claim seeking an advisory opinion on future Carrier actions. This Board has no jurisdiction to give that kind of opinion. We must therefore dismiss the claim.⁵

IV. AWARD

Claim dismissed.

Edwin H. Lewis
Neutral Member

LFB Royster
Carrier Member

J. H. Clark *U dissent*
Organization Member 12/15/95

Dated: December 5, 1994

⁴ Compare, *Third Division Award 19601 and Special Board of Adjustment, BRAC and Providence and Worcester Railroad Co.* (July 9, 1984) cited by the Organization (Orgs. Exh. 24) where employees were disciplined for honoring picket lines.

⁵ While it may be that the Organization is correct in its theory, the ramifications of the relief sought by the Organization are, nevertheless, far reaching. The essence of this claim is that by seeking relief from the Federal Court, the Carrier violated the Agreement. For all purposes, then, the relief the Organization seeks would preclude future access by the Carrier to the Federal Court in similar situations. This Board obviously cannot determine the jurisdiction of the Federal Court—only the Federal Court has that authority. We further question the enforceability of any award which has the practical effect of barring a party's access to the Federal Court. If the Organization is correct that the action filed by the Carrier in Federal Court was wholly without basis, frivolous or in bad faith, then, given a similar situation, appropriate sanctions can be sought from the Federal Court under Rule 11 Fed.R.Civ.Pro. But, the bottom line here is that there is no live dispute before this Board. While the issues on the merits are legally enticing, nevertheless, we simply have no jurisdiction to pass upon the merits of the claim.