

PUBLIC LAW BOARD NO. 5665

Parties
to the
Dispute

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS

vs.

THE UNION PACIFIC RAILROAD
COMPANY

Re: Vacation
Shutdown

CARRIER'S SUBMISSION

Whether the Carrier's requirements of service as contemplated by the December 17, 1941 Vacation Agreement, as amended, are sufficient to shut down the locomotive shop (includes Jenks Shop, Air Room Shop, Paint Shop, Turbocharger Shop and Wheel Shop) at North Little Rock, Arkansas, for two (2) weeks in 1995?

THE ORGANIZATION'S SUBMISSION

1. Does the Union Pacific Railroad Company have the right to shutdown its North Little Rock, Locomotive Shop, (Jenks Shop) Air Brake Shop, Paint Shop, Turbocharger Shop and Wheel Shop, during the weeks of July 3, 1995, and December 25, 1995, in order to force all employees assigned to those locations to take vacation during the shutdown weeks?
2. Are Carrier's reasons for the shutdown periods applicable to the requirements of service tests?

BACKGROUND OF THE CASE

On November 8, 1993, the Director of Carrier's Locomotive Shop in North Little Rock, Arkansas, notified local Union leaders at North Little Rock that the Company would shut down the Jenks Shop, Air Brake Shop, Paint Shop, Turbo-charger Shop, and Wheel Shop for one week in July 1994 and one week in December 1994. Considerable discussion of the proposed action took place.

The Organization categorically objected to Carrier's shutting down the facility. It eventually capitulated and Carrier shut down the facility one day in July 1994. Prospectively, it will shut down the facility for vacation the week of December 24 through December 30, 1994.

On October 13, 1994, Mr. Jolley, Director of the North Little Rock Locomotive Shop, sent a notice to local labor leaders that specified the vacation shutdown program for the year 1995. That notice is quoted below:

FROM: JACK JOLLEY

10/13/94

SUBJECT: Formal Notice
1995 Jenks Vacation Shut Down

Please be advised that the 1995 vacation schedule is expected to cover two (2)--one (1) week shut down periods in 1995.

One week is currently scheduled for December 25, 1995 and the second week is tentatively scheduled for July 3, 1995. As has recently been discussed, reasonable opportunity exists for negotiation. A meeting is not scheduled for 2:00 p.m. Friday, October 21, 1994, conference room, Jenks Shop, to review possible alternatives and options relevant to the Jenks Shop Vacation Shut Down Program.

A number of meetings were held with workers and Union leaders to discuss the 1995 vacation shutdown program. No settlement was reached. On or about November 19, 1994, the parties agreed to submit the dispute to arbitration and PLB 5665 was established. The Board met on November 30, 1994, to hear and resolve the dispute.

OPINION OF THE BOARD

A review of the record of this case and an analysis of Article 4(a) and (b) of the December 17, 1941 Vacation Agreement, together with the November 12, 1942, interpretation of these articles by Referee Wayne Morse, persuades this Board that Carrier does not have justification for imposing a vacation shutdown period at the Jenks Shop for the year 1995.

This Board has carefully studied the 1941 Vacation Agreement, the 1942 Morse interpretation of that Agreement,

and the voluminous submissions presented by the parties. As a result of that review, the Board has concluded that Carrier's reasons for shutting down the shop and directing that employees take group vacations are not sufficiently compelling to qualify as "requirements of service," as contemplated by the December 17, 1941, Vacation Agreement.

In October 1994, Carrier representatives notified local labor leaders in North Little Rock that the Jenks Shop would be shut down for vacation for two weeks in 1995. The week of July 3rd and the week of December 25th were specified as the weeks under consideration. The notification indicated that discussions about the shutdown were welcome. Carrier officials, Union leaders, and employees met to consider the issue. Throughout their discussions, Carrier stressed the need for economy and the possibility of saving money. It was indicated that if the shops were shut down for two weeks and employees took vacation during that time, Carrier could save about \$1.4 million.

In its presentation to this Board, Carrier played down budgeting as the reason for the vacation shutdown and played up the need to perform maintenance while the shops were closed. This Board, however, is persuaded that the prospective saving in overtime payments to cover vacation vacancies

was the main reason for Carrier wanting to shut the shops down, rather than any critical need to perform maintenance in the shop facilities during a shut-down.

In essence, Carrier is asking this Board to decide that the savings of \$1 million plus in overtime payments (which could be realized by not having to pay overtime to cover vacation vacancies) is an element that can be construed as a requirement of service sufficiently critical to the operation of the railroad to justify a group vacation, as contemplated under Article 4(b) of the Vacation Agreement. To agree with Carrier that savings of potential overtime payments is sufficient reason to justify a vacation shutdown, however, could be extremely mischievous and would be contrary to the intent of the parties to the 1941 Vacation Agreement, as well as to the 1942 Morse interpretation of that Agreement.

There are numerous statements in the Morse Interpretation of the 1941 Agreement that support the notion that employees should be granted vacations with preference granted on a seniority basis, that Carrier and the labor organizations should cooperate in the development of vacation

schedules, and that these schedules should not be allowed to have an impact on the operation of the railroad in any major way. There are also numerous statements that attempt to define the requirements of service standards when that concept is used to support an action by a Carrier. This Board could quote from the Morse Interpretation at great length to support its conclusion in this case. We think, however, that the following quotation sums up its position very well:

It is the opinion of the referee that it was not intended by the parties that the desires and preferences of the employees in seniority order should be ignored in fixing vacation dates unless the service of the carrier would thereby be interfered with to an unreasonable degree. To put it another way, the carrier should oblige the employee in fixing vacation dates in accordance with his desires or preferences, unless by so doing there would result a serious impairment in the efficiency of operations which could not be avoided by the employment of a relief worker at that particular time or by the making of some other reasonable adjustment. The mere fact that the granting of a vacation to a given employee at a particular time may cause some inconvenience or annoyance to the management, or increased costs, or necessitate some reorganization of operations, provides no justification for the carriers refusing to grant the vacation under the terms of Article 4 of the agreement.

While the magnitude of the potential saving in this case, \$1.4 million, may not have been contemplated in 1942 by Referee Morse when he issued his interpretation of the requirements or service standard, this Board thinks that it applies equally as well today as it did in 1942.

This Board is mindful of the potential savings that could be achieved by Carrier shutting down the Jenks shop for vacations. We cannot, however, agree that saving money, or increasing profits, is a sufficient reason to justify a blanket diminution of employee rights in regard to the selection and assignment of vacations on a seniority basis. If the Board were to decide that increased profits or cost savings standing alone constituted a sufficient reason for a change in the application of the Vacation Agreement, the door would be open to major modification across this railroad to institute vacation shutdowns where money could be saved. Therein lies the "mischief" mentioned above.

In regard to the Carrier's position that it must shut down the shops in order to perform needed maintenance, the Board was not persuaded that this was the paramount reason for desiring the shutdown. Carrier did not present a compelling case on this point and consequently the Board considered it a secondary justification for the shutdown,

questioning its validity. This Board realizes that being able to perform maintenance on plant and equipment is most desirable when the plant is shut down. It also recognizes that there may be special circumstances when a vacation shutdown is justified under the requirements of service standard--for example, when critical maintenance is required.

This Board is fully aware of the major changes in employe/employer labor relations that have taken place in the railroad industry in recent years. It is also aware that many of these changes have come about as a result of Arbitration, Public Law Boards, and Presidential Emergency Board Awards. Many of these decision have found reason to modify longstanding, antiquated practices that inhibit Carrier from operating the railroads efficiently. This Board is sympathetic to the need to effectuate savings, but we see no basis in this case for supporting Carrier's position that cost savings are a requirement of service that

would justify a major change in the standards that apply to granting group vacations.

AWARD

Carrier's requirements of service arguments are not sufficient to support the shut down of the Jenks Shop for two weeks in 1995.

R.E. Dennis
R.E. Dennis,
Neutral Member

D.J. Smith
D.J. Smith,
Carrier Member

D.E. Hall
D.E. Hall
Employee Member

January 10, 1995
Date of Adoption