

SPECIAL BOARD OF ADJUSTMENT 1048

Award No. 109
Case No. 109

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Norfolk Southern Railway Company

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier improperly withheld Virginia Division employees L. W. Lewis, M. E. Buckner, R. L. Bowman, E. W. Harless, W. K. Smith, S. E. Ratcliffe, C. W. Smith, J. S. Owens, R. C. Stump, II, M. V. Saunders, D. R. Walters, K. L. Stephens, D. J. Linkous, C. W. Monk, W. P. Radford and K. M. Johnson from service on May 4, 2000 (Carrier's File MW-ROAN-00-33-LM-238).
2. The Agreement was violated when the Carrier improperly withheld Roanoke Roadway Material Yard employees E. A. Belcher and E. R. Guilliams from service on May 4, 2000 (Carrier's File MW-ROAN-00-36-SG-247).
3. The Agreement was violated when the Carrier improperly withheld Roanoke Roadway Material Yard employees J. E. Bowers, J. S. Davis, J. Giles and K. S. Saunders from service on May 4, 2000 (Carrier's File MW-ROAN-00-37-SG-248).
4. As a consequence of the violation referred to in Part (1) above, Claimants L. W. Lewis, M. E. Buckner, R. L. Bowman, E. W. Harless, W. K. Smith, C. W. Smith, R. C. Stump, II, D. R. Walters, D. J. Linkous, W. P. Radford and K. M. Johnson shall each be allowed six (6) hours' pay at their respective straight time rates and Claimants

S. E. Ratcliffe, J. S. Owens, M. V. Saunders, K. L. Stephens, and C. W. Monk, shall each be allowed four (6) hours' pay at their respective straight time rates.

5. As a consequence of the violation referred to in Part (2) above, Claimants E. A. Belcher and E. R. Guilliams shall each be allowed four (4) hours' pay at their respective straight time rates.

6. As a consequence of the violation referred to in Part (3) above, Claimants J. E. Bowers, J. S. Davis, J. Giles and K. S. Saunders shall each receive four (4) hours' pay at their respective straight time rates.

FINDINGS:

This Board, upon the whole record and all of the evidence, after hearing, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended,; and

2. That the Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction over the parties and the subject matter involved in this dispute.

3. This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

OPINION OF THE BOARD:

A careful review of the record indicates that a strike occurred on May 4, 2000 and caused the suspension of certain operations of the Carrier for a few hours during the morning of May 4, 2000. The strike ended by the issuance of a Temporary Restraining Order by the United States District Court for the Western District of Virginia at 9:00 a.m. on May 4, 2000. (Civil Action No. 98-0377-R.) (Attachment 1 to Employees' Exhibit D-1 and Carrier's Exhibit A.)

The Organization asserts that the Claimants reported for work approximately several hours after their scheduled starting time on May 4, 2000. The Carrier maintains that it exercised its managerial right to wait until the next day to re-establish the positions of the Claimants because no right existed for the Claimants to work only a portion of their previously assigned

shifts.

Rule 15(a) of the Agreement provides:

No advance notice will be required before positions are temporarily abolished or forces are temporarily reduced where a suspension of the Carrier's operations in whole or in part is due to a labor dispute between the Carrier and any of its employees.

In issuing the Temporary Restraining Order, the United States District Court indicated that:

the Court specifically finds that:

- (a) Defendants are engaging in unlawful acts and unless enjoined, will continue to engage in unlawful acts

(Attachment 1 to Employees' Exhibit D-1 and Carrier's Exhibit A.)

The Court ordered that the persons covered by the Temporary Restraining Order were:

- (1) enjoined and restrained from, in any manner or by any means:
 - (a) directing, calling, causing, approving, authorizing, instigating, conducting, threatening, continuing, encouraging, inducing or engaging in the current strike, or any other strike, sickout, slowdown, work stoppage, refusal to work, picketing and refusal to cross a picket line or at or outside the premises of or against NSRC

(Attachment 1 to Employees' Exhibit D-1 and Carrier's Exhibit A.)


The formal findings and conclusions of the United States District Court established that a labor dispute had occurred. The System Board of Adjustment lacks the authority to disregard the findings and conclusions of the United States District Court. Rule 15(a) therefore expressly permitted the Carrier to temporarily abolish the referenced positions or to temporarily reduce the referenced positions under the specific circumstances without advance notice until the next day, May 5, 2000.


AWARD:

After thoroughly reviewing and considering the record and the

parties' presentations, the Board therefore finds that the Claim should be disposed of as follows:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


D. D. Bartholomay
Organization Member
Dated: 10/28/02


D.L. Kerby
Carrier Member