

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES)
TO)
DISPUTE)
Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
and
Penn Central Transportation Company

QUESTIONS
AT ISSUE:

- (1) Did Carrier violate Article I, Section 4 of the February 7, 1965 Stabilization Agreement on Monday, July 17, 1967, when it arbitrarily made a force reduction without first giving the required sixteen hours' advance notice to the employees affected before such reductions were made.
- (2) Shall Carrier now be required to pay the following named employees eight hours' pay at pro rata rate of their respective rates for July 17, 1967.

Southern District

JT Cunningham	JP Brennan	RB Bewley
JE Schualbach	L. Hill	GA Konrad
EW Lawson	M. Homan	T. Hamilton
AC Dietz	RD James	GB Verkamp
H. Chalk	P. Mooney	LI Colligan
JJ Powers	SE Roberts	KW Strickland
LA Plye	WB Waddell	RD Quackenbush
BA Pugh	FE Crutcher	JH Bratcher
RE Loheide	JE Proffitt	JP Willenbrink
DC Trapp	MI Thompson	FJ Brockmeier
L. Unger	JE Teel	SA Wilson
JW Garwell	RV Serger	MT Frye
R. Sund	DL Carriger	GA Youtcheff
RE Carpenter	CA Peter	ME Grace
JW Sparkman	EP Hammons	JP Lowry
T. Hopkins	JH Huffman	JJ Bishop
FH Mayer	TC Lewis	TL Kilander
H. Leder	FD Lemons	GP Raky
GE Coakley	JR Setser	LP Wiley
RG Heaton	AT Armstrong	SB Hawley
HA Strubel	GM Clemmer	CA Hill
RI Bloom	J. Cooper	KH Hogan
BA Hair	CW Hartman	OE Hogan
JC Cartwright	MH Kitch	RL Hoots
E. Teeters	CE Lindsay	GO Jenkins
FM Wilkins	SD McKinney	W. Jones
W. Young	L. Scott	CH Johnson
AA Weigand	SJ Wolbert	UL Johnson
JA Cummins	NM Goins	Charles Joyce
JR Bennett	OA Hankins	JW Karns
CA Welton	M. Hart	Florine King
TL Truxell	MS Haynes	Willie King

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CE King	JH Hurst	BJ Kocher
C. Dallas	EH Miller	Lee Lay
PA Miller	SE Morris	DE Lickliter
P. Jackson	DA Ryan	DM McAlister
LW Stone	NL Skirvin	JR Mendez
D. Webb	MJ Watter	HE Gamber
BA Gillooly	CN Wood	J. Brodericke
LJ McGuire	RE Reed	HL Cline
HD Vest	R. Richardson	FL Miles
D. Hauser	M. Ross	WA Miles
C. Cunningham	WJ Arterberry	E. Mink
G. Kastensmidt	LT Bailey	HD May
RH Setter	DK Barker	H. Parker
A. Knust	Herman Bivens	JR Paugh
L. Harville	JA Bramwell	C. Peoples
FL Sullivan	WF Brodbeck	Joann Peterman
M. Mobley	L. Burton	ND Phillippe
G. Buehling	Juel Canary	William Plank
P. Clements	DL Caughey	JR Pool
EL Egan	CW Cecil	RA Poulos
JR Colston	Henry Clayborne	WB Poulos
TR Colston	CG Coy	G. Pritchard
R. Warfield	Woodrow Deerberg	JD Rockey
RA Garry	RW Dennis	Richard Roller
CR Gibbs	AJ Dietz	Henry Royster
RO Benedict	AL Dillon	RM Ruff
WA Morey	WE Dobbs	BJ Russell
W. Miracle	WW Doig	D. Scaringe
GJ Foss	MS Denahue	Helen Scaringe
RE Barry	GF Downing	MP Sears
MJ Fishbaugh	ML Druding	Frank Sims
EL Kolterman	D. Dupree	RH Skelton
CE Crawford	M. Evans	ME Smith
EI Socie	CL Fentz	T. Smith
G. Price	CL Frazier	WC Smith
JH Wise	WO George	GE Speer
ID Boatright	EL Gibson	JE Spencer
EC Boyett	M. Greene	MK Stoneking
L. Gall	H. Grismore	EB Stout
J. Shanks	BP Hamilton	HM Stout
H. Fair	BA Hartwell	FE Stout
JO Taylor	E. Thompson	MM Sulgrove
JH Thornburgh	VM Harbison	H. Fergus
RF Toohy	WB Weathers	WC Maley
Oliver Turner	SC Ball	CW Baughman
DR Via	FK Shaw	CL Taylor
ML West	Ray Majino	DA Walters
A. Wheatley	EW Reas	MM Ferguson
ME Wheatley	WL Beard	RJ Walters

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SR White	RL Brown	MW Knotts
W. White, SR.	Helen M. Allen	E. Henthorne
LF Williams	FW Boyd	RB Hall
R. Williams	JH Glickert	FA Mayer
AE Wiltes	JB Lanthrop	K. Krug
EL Wright	RE Robinson	JA Waddell
WA Murphy	CE Soandlin	AL Koontz
JD Zervas	GM Windler	SA Horton
HA Storckman	Lillian Ronan	NV Hopkins
WE Lewis	WW DeLong	RG Byrd
WC Branan	HL Jacobs	L. Matthews
RS Packer	LE Henry	G. Bitts
VS Daffer		

Northern District

G. Hale	KM Goodnoe	E. Sears
O. Goodman	EP Minarchan	T. Nall
B. VanOveron	RE King	B. Bennett
C. Neal	JA March	J. Fye
GB Moore	A. Luedemann	G. LaPointe
LE Buysse	F. Lis	W. Skocen
AA Rowe	R. Wolfe	L. Peterson
CM McKenzie	D. Cornacchia	L. Cook
G. Benedict	J. O'Connor	E. Stoll
D. Andrews	G. Brown	S. Male
N. Hale	M. Murray	R. Baker
CB McGennis	E. Litwin	D. Catny
DM Grix	L. Passino	W. Bentley
J. Vettraino	S. Ryzewicz	J. Starr
NM Love	H. Luedemann	R. Rodriguez
M. Nichols	J. Wilk	H. Grabowski
C. Bugar	W. McQuilken	E. Hurley
D. Charlton	F. Nabozny	D. Smith
H. Mackris	G. Navarrette	O. Polycross
M. Glowchewski	A. Villa	C. Harris
B. Dumoulin	C. Wing	R. Griffin
L. Laurence	M. Miller	N. Crawford
M. Dolgner	V. Lis	H. Grabowski
A. Waligora	J. Bennett	T. Milton
S. Miesel	W. Smith	M. Reed
F. Yockey	J. Brisbee	T. Katros
S. Althouse	F. Morrell	V. Zvirblis
M. Boone	B. Jacobs	S. Marek
T. Peters	E. Ford	R. Muczynski
J. Walker	M. Gratz	M. Schmittou
N. Dobson	U. Bernier	J. Kennedy
M. Darcy	B. Biondo	W. Rigley
O. Schade	S. Schumann	G. Mullan

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P. Murphy	H. Balsey	R. Pounders
M. Solack	N. Poens	M. MacArthur
L. Edick	M. Radloff	M. Archer
G. Shafer	J. Veling	A. Kneules
F. Kilenfeld	B. Brabowski	R. Saad
W. Jean	T. Rankin	L. Winchester
E. Anagnos	V. Zolensk	R. Wood
B. Lottermesser	A. Longton	J. Vidak
H. Laughton	H. Fallon	H. Fee
I. Vance	J. Ferva	H. Whelan
M. Youko	M. Pattenauide	H. Sutliff

**OPINION
OF BOARD:**

Late Sunday afternoon, July 16, 1967, the Carrier was verbally notified by the Shop Craft unions that a strike would commence at 12:01 A.M. on July 17. The Carrier,

"Immediately telephoned all available Non-operating General Chairmen and advised them of the action of the Shop Crafts unions. The General Chairmen were also informed that the agreed upon procedure for the temporary suspension of positions would be activated at 12:01 A.M. on July 17, with appropriate notices to be posted advising the employees. Such notices were posted all over the System as soon as practicable after the Shop Crafts General Chairmen had notified the Carrier of their strike action."

Thereafter, the Organization filed the instant Claim on behalf of the affected employees for eight hours pro rata pay for July 17, 1967, alleging a violation of Article I, Section 4, of the February 7, 1965 National Agreement, in that the Carrier wrongfully suspended Claimants' positions without giving the required sixteen hours advance notice.

The pertinent portion of Article I, Section 4, of the February 7, 1965 Agreement, is hereinafter quoted:

"Notwithstanding other provisions of this Agreement, a carrier shall have the right to make force reductions under emergency conditions such as flood, snow-storm, hurricane, earthquake, fire or strike, provided that operations are suspended in whole or in part and provided further that because of such emergencies 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 reductions no longer exists or cannot be performed. Sixteen hours advance notice will be given to the employees affected before such reductions are made."

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In view of the numerous conflicting Awards which have been rendered by Referees on the Third Division, as well as those on our Board, involving disputes arising under the identical generating circumstances herein--strike--we believe it to be incumbent upon us to attempt to finally put a quietus on this series of disputes. In that vein, we start with an analysis of the aforementioned Section 4. What rights are granted to the Carrier?

- a. Under emergency conditions arising from a strike.
- b. Shall have the right to make force reductions

What further requirements must be present before it may exercise such grant?

- a. Provided operations are suspended in whole or in part, and
- b. Provided the work which would be performed by the incumbents of the positions to be abolished, or
- c. The work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed. (Underlines added by us)

What other condition precedent is included in said right granted to the Carrier?

- a. Sixteen hours advance notice will be given to the employees affected before such reductions are made.

Thus, in order for a Carrier to be relieved of its liability for a day's pay to affected employees, certain duties are imposed on the Carrier. These may be briefly summarized--a strike; suspension of operations; abolishment of positions of affected employees; work performed by employees involved in force reductions no longer exists or cannot be performed.

It is noteworthy that in Award No. 115, et al, of our Board, the Referee determined that the Carrier was not liable, based upon the fact that the positions were temporarily suspended and not abolished. Our most careful analysis of Section 4, failed to reveal the inclusion of any grant to the Carrier to suspend positions in order to be relieved of the consequences. We did find the words "force reductions" and "abolished."

Furthermore, in Award No. 200, of our Board, the Referee, in sustaining the Organization's claim, indicated that Section 4, does not distinguish between temporary suspensions and abolishment of positions. Therefore, having failed to give the required sixteen hours advance notice--a condition precedent to layoffs--a violation occurred.

We are in agreement with Award No. 200, to the extent that a "force reduction by some other name does not change the obligation to give notice." However, this merely begs the question which has given rise to the diverse Awards decided by the Third Division, on the problem of notice. In Award No. 17989, Third Division, the Referee summarized a number of Awards, as follows:

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"In the application of the sixteen-hour rule it is established (1) that telephone notice is sufficient and written notice is not required (Awards 17014, 17674, 17964); and (2) that the sixteen-hour advance notice applies to clock hours from the time the notice was actually given (Awards 17708, 17780, 17958, 17964)."

In Carrier Members' Dissent to our Board's Award No. 200, the following is contained therein:

"In this case the mutual understanding was reflected in the letter dated July 14, 1967, and as the Referee now states: 'the substance of the understanding was unchallenged.' The July 14th letter contained the following statement:

"This confirms our understanding that except as the employee may be otherwise notified, all existing positions will be temporarily suspended effective at the beginning and for the duration of the strike." (Emphasis supplied) sic.

Unfortunately, in the instant dispute we are compelled to reconstruct the arguments of the parties as reflected in the Exhibits, in order to give meaning to the contents of the July 14th letter. In Organization Exhibits "A" & "B", there is included a review of the history of alleged verbal understandings with the various General Chairmen providing for temporary suspension of positions during strikes, commencing in July, 1963. These are contained in the declinations by the Carrier of the instant claim. Insofar as the contents of the July 14 letter is concerned, we quote from Award No. 200:

"Positions were not subject to bulletining as they would have been if they had been abolished. Both parties had agreed to the procedure for suspension of positions rather than abolishment, in order to avoid the disruption and disorganization which would result if all positions were thrown open for bid. This understanding was embodied in a letter drafted by the Carrier's Manager-Labor Relations, dated July 14, and sent to the General Chairman. Although a place was left on the letter for the General Chairman's signature under the words, 'I concur,' the General Chairman did not sign and return it. But the substance of the understanding was unchallenged." (Underline added by us).

Of course, it should be noted that the General Chairman alluded to above, as well as the Award therein, had reference to the Signalmen's Organization and not the Organization herein. Interestingly enough, we are compelled to quote further from the Carrier's declination of October 23, 1967, Organization Exhibit "B":

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"On this short notice (of impending strike at 12:01 A.M.) our people immediately telephoned all available Non-operating General Chairmen and advised them of the action of the Shop Craft unions. Those General Chairmen were also informed that our agreed upon procedure for the temporary suspension of positions would be automatically activated at 12:01 A.M. on July 17, with appropriate notices to be posted advising the employees. Such notices were posted all over our System as soon as practicable after the Shop Craft General Chairmen notified us of their strike action."

"I note the General Chairman predicates his claim on the basis that proper advance notice was not given employees whose positions he agreed could be temporarily suspended and inferred that claimants would have crossed picket lines on July 17. I am sure both you and the General Chairman know the 5-day and 16-hour advance notice rules in existing agreements are only applicable when positions are to be abolished. Since our previously described agreement with Mr. Batory was contingent upon his waiving the advance notice rules as well as the fact that no positions were abolished on July 17 but merely temporarily suspended during the one-day strike, - - -."

Thus, throughout all levels of the appeal procedure on the property, the Carrier insisted that the instant claim be denied on the ground that, "both Special Board of Adjustment # 605 and the Third Division, N.R.A.B. have ruled that when positions are temporarily suspended, as in the present dispute, rather than abolished, the 16 hour advance notice is not required." (Employees' Exhibit "E," Patterson letter of December 11, 1969.)

We accept the fact that Mr. Patterson's letter as of December 11, 1969, may have correctly stated the gist of the Awards, at that time. Since then, however, Award No. 200, was rendered on January 20, 1970 and Third Division Award Number 17989, was decided on June 25, 1970, to the contrary.

Previously, we indicated that in our opinion, Article I, Section 4, of the February 7, 1965 Agreement, grants the Carrier a bundle of rights on the condition that it adhere to the restrictions. Thus, a discussion of the requirement that it comply with the sixteen hours advance notice before such reductions are made is relevant. Leaving aside for the moment the Carrier's allegation of an oral agreement which countermands suspension of positions rather than abolishment, it then insists that suspension is beyond the purview of Section 4. Hence it may do so without the necessity of giving the required advance notice. We are mystified by such circuitous reasoning. Clearly and precisely, the Carrier is granted the right to make force reductions or abolishments--nowhere does Section 4 provide for temporary suspensions. Albeit, a

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Carrier may make force reductions under the guise of suspensions, however, why does it conclude that then the required advance notice is unnecessary? What mystique is there about a temporary suspension which differs from a force reduction? True, we are aware of the ramifications involved in an abolishment, but Section 4, specifically, includes force reductions and similarly, requires the advance notice. As previously indicated, to this extent we concur with the Referee in Award No. 200, as such is the actual and factual substantive procedural requirement.

We next proceed to the question of advance notice. What type of notice is required? All Section 4 states, is sixteen hours advance notice. We are prepared to accept the reasoning contained in Third Division Award No. 17989, only insofar as notice is concerned. Thus, telephone notice is sufficient and the criterion for said sixteen hour notice applies to clock hours from the time the notice was actually given. As we have no method of ascertaining whether or not claimants received the sixteen hours advance notice, this issue will be referred back to the property.


Was there an oral agreement to waive the sixteen hours advance notice if Carrier suspended positions instead of abolishing? In our view, one additional facet of this problem remains to be considered. Having analyzed the aspect of suspension and abolishment, we are required to discuss the Carrier's allegation of an oral understanding starting with July, 1963. The National Agreement in issue herein was executed on February 7, 1965 and the Interpretations thereto of November 24, 1965, is silent on this phase. Article I, Section 4, is clear, unambiguous and specific. In order to avail itself of a substitute defense to the requirement that it gave advance notice, a Carrier would be compelled to demonstrate that it entered into an explicit waiver of this express provision. In essence, as we understand the Carrier Members' Dissent to Award No. 200, it is predicated upon an estoppel. Not having been present at the hearing thereon, we refrain from any comment. However, in our view of the instant matter, we would be loathe to accept a "verbal understanding" involving such a basic provision; unless the proof of such oral understanding is sufficiently persuasive to a neutral. Hence, under the circumstances prevalent herein, evidencing lack of concrete proof of a waiver of the sixteen hours advance notice before such reductions are made, a Carrier would be well advised either to enter into a written agreement to that effect, or in lieu thereof, to give the required notice whether it is called a force reduction, temporary suspension, or abolishment.

It is, therefore, our considered opinion that the Carrier violated the Agreement when it made a force reduction without giving the required sixteen hours advance notice. Insofar as assessing compensation for such violation, the matter is referred back to the property for the purpose only of determining which employees may or may not have received the sixteen hours advance notice and such hours apply to clock hours from the time the notice was actually given.

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AWARD

The answer to question (1) is in the affirmative. The answer to question (2) is referred back to the property per Opinion.


Murray M. Rehman
Neutral Member

Dated: Washington, D. C.
June 9, 1971