Award No. 1738
Docket No. 1603
2-NYC-FT-'54

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Federated Trades)

THE NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That at Linndale, Ohio, the Carrier deprived certain employes in the crafts of Blacksmiths, Boilermakers, Carmen, Electrical Workers, Machinists and Sheet Metal Workers of their service rights in the amounts varying from 8 hours, 16 hours and 24 hours within the dates of March 9th, 10th, 11th, 12th and 13th, 1952 in violation of the current agreement applicable to such classes of employes.

2. That accordingly the Carrier be ordered to reimburse such aforementioned employes the full amount of their respective losses of one day or 8 hours' pay, 2 days or 16 hours' pay and 3 days or 24 hours' pay at their respective applicable hourly rates.

EMPLOYES' STATEMENT OF FACTS: At Linndale, Ohio, the carrier made the election without proper notice to cancel the right of certain employes to fill their regular assignments, beginning with some on March 9, 1952, and ending with others on March 13, 1952, both in the car department and in the locomotive department. The nature and time of instructions issued by the carrier to these employe claimants in the car department are submitted herewith and identified as Exhibits 1, 1(a) and 1(b). The statement of the committee at the end of Exhibit 1 reveals that they received Mr. King's notice to abolish all positions in the car department at 3:30 P. M., Monday, March 10, 1952. However, the nature and time of instructions that were issued by the carrier to the employe claimants in the engine house are outlined in the attached copy of statement dated August 14, 1952, signed by the duly authorized committeemen of the boilermakers, of the carmen, of the electrical workers, of the machinists and of the sheet metal workers, identified as Exhibit 1 (c).

The names, the classifications, the dates of time losses and the total amount of the hours so lost by these employe claimants are comprehensively identified in the attached:

1. Exhibit A covering the blacksmiths' craft.
2. Exhibit B covering the boilermakers' craft.
3. Exhibit C covering the carmens' craft.

4. Exhibit D covering the electrical workers' craft.

5. Exhibit E covering the machinists' craft.

6. Exhibit F covering the sheet metal workers' craft.

This dispute has failed of settlement with the carrier on any acceptable basis and the agreement effective July 16, 1946, with revisions to July 1, 1951, is controlling.

POSITION OF EMPLOYES: It is submitted as disclosed in the aforementioned facts and exhibits that the carrier wrongfully deprived these employe claimants of the service rights as claimed in the aforestated statement of dispute in clear violation of the unambiguous provisions of the aforesaid controlling agreement. These applicable provisions will be found in Rule 27 captioned "Reduction of Forces" and in part they read:—

"(a) When it becomes necessary to reduce expenses, the forces at any point or in any department shall be reduced, seniority as per Rule 31 to govern.

(b) Four days' notice will be given employees affected before reduction is made and lists will be furnished the local committee. In the reduction of the force the ratio of apprentices at the time the reduction is made shall be maintained.

(c) In case of a reduction in force or the abolition of a position, employees affected shall be allowed to exercise their seniority in displacing any junior employees at their home points. Employees exercising displacement rights under this rule on temporary vacancies or positions will have further displacement rights when deprived of the temporary jobs.

(d) Employees will promptly exercise their displacemennt rights so that all men affected may be placed within fifteen days, after effective date of reduction in force. Employees who do not so exercise displacement rights will be furloughed.

(e) In the restoration of forces, employees will be restored to service in accordance with their seniority if available within a reasonable time and shall be returned to their former positions if possible providing they have not in the meantime exercised their seniority rights on permanent positions under Rule 18. The local committee will be furnished with a list of employees to be restored to service."

Rule 31 referred to in the above quoted first paragraph of Rule 27 reads in its entirety as follows:—

"SENIORITY

(a) Seniority of employees in each craft covered by this agreement shall be confined to the point employed in each of the following departments, except as provided in special rules of each craft:

Maintenance of Way (Bridge and building where separate from maintenance of way department).

Maintenance of equipment.

Maintenance of telegraph.

Maintenance of signals.

Four subdivisions of the carmen as follows:

Patternmakers.
Upholsterers.
Painters.
Other Carmen.

(b) The seniority lists will be open to inspection and copy furnished the Local Committee and General Chairman."

It is truly an indisputable fact that the carrier unilaterally ordered the employe claimants named in Exhibits A through F to cease filling their regular assignments in violation of four days' notice requirements contained in the first sentence of Paragraph (b) of Rule 27 above quoted and this is abundantly substantiated by Exhibits 1, 1 (a), 1 (b) and 1 (c).

Moreover, the carrier likewise arbitrarily violated the very fundamental requirements of the above quoted Rule 27 (b) by not furnishing the local committees a list of the employes that were laid off, showing the actual time and date that such employes were laid off to effectuate a reduction in expenses as permitted by the terms of Paragraph (a) of Rule 27 above quoted. The "lists" referred to in Rule 27 (b) were not at the time and have not since then been made available to the involved local committees.

Consequently, since there is no provision in the controlling agreement or no prevailing verbal or written understanding between the carrier and System Federation 103 whereby any of the forces may be reduced before they have had the required four days' notice stipulated in Rule 27 (b), it thus becomes manifest on the basis of the facts and the explicit provisions of the agreement hereinabove established fully justifies the Honorable Members of this Division sustaining the statement of claim in its entirety.

CARRIER'S STATEMENT OF FACTS: At 8:00 A. M. on Sunday, March 9, 1952, with no advance notice to or knowledge of the carrier, a general strike against this carrier was called by the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen and the Order of Railway Conductors. Picket lines were immediately established at all major terminals on the lines of the carrier involved. The officials of the carrier had no reason to believe that a work stoppage was contemplated and learned of the imminence of the strike only a few hours prior to its commencement.

The immediate result of this strike was to stop all railroad operations on the affected lines and terminals of the carrier and operations were not resumed until March 12, 1952 when the striking employes returned to their jobs in compliance with a temporary restraining order issued by the United States District Court for the Northern District of Ohio on petition of the Federal Government.

With its railroad operations thus abruptly stopped, the management of the carrier moved as quickly as possible to terminate the services of all employes whose work was thereby eliminated. Some 40,000 employes of the carrier, including the claimants herein, were notified that their jobs were abolished. These notices were served as fast as work opportunities ceased. Many of them were posted on March 9, and took effect with the shift commencing next after posting. In many cases employes off duty on that day, which was Sunday, were notified by telephone at their homes not to report for work.

With the exception of work performed by certain employes engaged in equipment reconstruction and heavy repairs, all work performed by employes in these classes was gradually eliminated as a result of this strike. The sudden and complete stoppage of trains automatically eliminated all car inspection and running repair work. Heavier car repair work was made

impossible by the stoppage of yard switching operations and shortage of materials. This was also true of work normally performed in engine houses, and at other facilities and in other departments. Thus if these employes had been continued in service, there would have been no work for them to perform and they would have been paid for doing nothing.

The claim of the organization in this case arises out of the failure of the carrier to apply the notice provisions of Rule 27 of the applicable agreement, which reads as follows:

> "(a) When it becomes necessary to reduce expenses, the forces at any point or in any department shall be reduced, seniority as per Rule 31 to govern.
>
> (b) Four days' notice will be given employees affected before reduction is made and lists will be furnished the local committee. In the reduction of the force the ratio of apprentices at the time the reduction is made shall be maintained.
>
> (c) In case of a reduction in force or the abolition of a position, employees affected shall be allowed to exercise their seniority in displacing any junior employees at their home points. Employees exercising displacement rights under this rule on temporary vacancies or positions will have further displacement rights when deprived of the temporary jobs.
>
> (d) Employees will promptly exercise their displacement rights so that all men affected may be placed within fifteen days, after effective date of reduction in force. Employees who do not so exercise displacement rights will be furloughed.
>
> (e) In the restoration of forces, employees will be restored to service in accordance with their seniority if available within a reasonable time and shall be returned to their former positions if possible providing they have not in the meantime exercised their seniority rights on permanent positions under Rule 18. The local committee will be furnished with a list of employees to be restored to service."

The organization has contended that the 4 days' notice provided for in paragraph (b) of the rule quoted above should have been given by the carrier to these employes prior to the abolition of their jobs on the occasion of this strike and that because of carrier's failure to do so the employes concerned should be paid such amounts as would have been due them had the rule been applied to the situation involved.

Except for the dispute relating to the advance notice, hereinbefore referred to, there has been no question raised respecting the manner in which these jobs were terminated, it having been mutually accepted that the jobs were actually abolished and subsequently reestablished in accordance with the governing rules.

POSITION OF CARRIER: It is the position of the carrier that Rule 27 of the agreement, relied upon by the organization, has no application to this case.

The carrier contends that the provisions of this rule are concerned exclusively with the routine and orderly changes in force which occur in the normal course of railroad operations, and that it does not apply to a situation, such as that prevailing in this case, where a condition beyond the control of the carrier resulted in a sudden and substantial work stoppage. An examination of the rule supports this view.

Reference to the text of the rule discloses that its application is conditioned upon a need to reduce expenses. Its initial language provides that "When it becomes necessary to reduce expenses, the forces * * * shall be reduced," etc. What happened in this case was not the result of a desire by management to reduce expenses, although that may have been an incidental ultimate effect. Here the positions were abolished for the principal reason that no work remained for these employes to perform. The railroad was shut down. The work normally performed by these employes disappeared. If they had been kept on the payrolls they would have been compensated for doing nothing. The reason for this layoff was that there was no work to do; not because "it [became] necessary to reduce expenses."

Nothing is said in this rule, which indicates that the parties had in mind anything other than the usual and customary force reductions which occur from time to time on the railroad and under which a small part, or percentage, of the employes are temporarily or permanently removed from the service for the purpose of reducing expenses. Nothing in this rule points to any intention of the parties to legislate on the situation here involved, where it was necessary to substantially reduce the force because of emergency conditions beyond the control of the carrier. The giving of a 4-day notice would have served no purpose other than that of requiring the carrier to retain unnecessary personnel on its payrolls.

This interpretation of the rule is fortified by an examination of its history. The original rule on this subject became effective October 20, 1919 in the so-called National Agreement of that year. At that time the pertinent part of the rule read as follows:

> "Rule 27—Reduction of Forces.
>
> When it becomes necessary to reduce expenses, the force at any point or in any department or subdivision thereof shall be reduced, seniority as per Rule 31 to govern; the men affected to take the rate of the job to which they are assigned.
>
> Five days' notice will be given men affected before reduction is made, and lists will be furnished local committee."

Immediately following Federal Control the foregoing quoted rule with adaptations was incorporated into the present agreement pursuant to Addendum 6, Decision No. 222, United States Railroad Labor Board, effective December 1, 1921, and then read as follows:

> "When it becomes necessary to reduce expenses, the hours may be reduced to forty (40) per week before reducing the force. When the force is reduced, seniority as per Rule 31 will govern, the men affected to take the rate of the job to which they are assigned.
>
> Forty-eight (48) hours' notice will be given before hours are reduced. If the force is to be reduced, four days' notice will be given the men affected before reduction is made, and lists will be furnished the local committee.
>
> In the restoration of forces, senior laid-off men will be given preference in returning to service, if available within a reasonable time, and shall be returned to their former position if possible, regular hours to be re-established prior to any additional increase in force.
>
> The local committee will be furnished a list of men to be restored to service. In the reduction of the force the ratio of apprentices shall be maintained."

This rule (except for additions not pertinent to the instant dispute) remained in effect until its revision became necessary on September 1, 1949 because of the 40-hour week. For the record, immediately prior thereto this rule had read as follows:

> "When it becomes necessary to reduce expenses, the hours may be reduced to forty per week before reducing the force. When the force is reduced, seniority as per Rule 31 will govern, the men affected to take the rate of the job to which they are assigned.
>
> Forty-eight hours' notice will be given before hours are reduced. If the force is to be reduced, four days' notice will be given the men affected before reduction is made, and lists will be furnished the Local Committee.
>
> In the restoration of forces, senior laid-off men will be given preference in returning to service, if available within a reasonable time, and shall be returned to their former position if possible, regular hours to be re-established prior to any additional increase in force.
>
> The Local Committee will be furnished a list of men to be restored to service. In the reduction of the force the ratio of apprentices shall be maintained.
>
> In case of a reduction in force or the abolition of a position, employees affected shall be allowed to exercise their seniority in displacing junior employees at their home points.
>
> Employees will promptly exercise their displacement rights so that all men affected may be placed within fifteen days. Employees who do not so exercise displacement rights will be furloughed."

It is important to note that the original rule, like the present rule, referred to a situation where "it becomes necessary to reduce expenses". Throughout the history of the rule, this basic purpose has been preserved. It is significant that at no time did this rule make any mention either directly or indirectly to emergency situations such as those produced by a cessation of railroad operations and disappearance of the work normally performed.

Actually such emergency situations had been contemplated, and were specifically covered by interpretations under Rule 30. During the time the so-called National Agreement was in effect for a time following 1919, disputes arose as to the meaning of Rule 27 as it then existed. In the exercise of authority vested in him by law at that time, the assistant director, United States Railroad Administration, issued an interpretation of this rule under date of January 19, 1920 which was for the guidance of the parties in applying it on the individual railroad properties. In this interpretation the director general made the following statement of principle to be observed in the application of the rule:

> "Under Rule 27, seniority will govern when reducing forces. Mechanics do not hold seniority over helpers. Forces may be reduced—hours cannot. **Under conditions specified in Rule 30, shops may be closed down without giving 5 days' notice, as provided for in this rule."** (Emphasis added.)

National Agreement Rule 30, referred to in this interpretation, read as follows:

> "Employees required to work when shops are closed down, due to breakdown in machinery, floods, fires, and the like, will receive straight time for regular hours, and overtime for overtime hours."

The first paragraph of current Rule 30 (agreed to July 1, 1921 as a substitute for National Agreement Rule 30) is essentially the same as the National Agreement Rule. Current Rule 30 reads as follows:

> "Employees required to work when shops or any department thereof are closed down due to breakdown in machinery, floods, fires and the like, will receive straight time for regular hours, and overtime for overtime hours.
>
> It is understood that such men as are qualified for the work to be done will be used to do the work of his craft."

An interpretation of this rule, which also has great importance in emphasizing the rights of the carrier in situations similar to the one involved in the instant dispute, is that contained in a letter written by the assistant director, United States Railroad Administration, under date of January 19, 1920 to the federal manager of the C.C.C. & St. L. R.R. (one of the operating districts of this carrier), the pertinent part of which read as follows:

> "Employes **should** be notified, **if possible,** before reporting for duty when shop is shut down due to causes specified in Rule 30. Employes worked two hours and then relieved on account of shop being shut down, due to causes specified in Rule 30, should be paid for **time actually worked."** (Emphasis added.)

This answer was made to an inquiry as to how employes who had worked less than a day (in this case only 2 hours) should be paid when a shop was closed down due to an emergency as referred to in National Agreement Rule 30. The assistant director's reply, just quoted, clearly indicates that in such situations the employes are not entitled to "Four days' notice" or even to a minimum day of 8 hours, but only to pay for the time actually worked, which on that occasion amounted to only 2 hours.

That a strike has always been considered an emergency under force reduction rules similar to that involved in the instant dispute is established without question by Docket JE-572, of Railroad Board of Adjustment No. 2, dated at Washington, D. C., July 10, 1919. Briefly, that case involved a claim for pay for time lost because the specified advance notice had not been given employes who had to be sent home because a strike of power plant employes had suddenly cut off the steam supply necessary for the operation of machines, forges, and other tools. The Board in that case denied the claim of the employes for pay for time lost. This decision was issued under the authority of the director general of railroads, United States Railroad Administration.

Thus, in accordance with the interpretation originally placed upon the rule by the authority who promulgated the rule, the provision respecting the giving of advance notice of force reduction was not intended to be applied in cases where operations were stopped due to breakdowns, floods, fires and STRIKES.

It is the position of the carrier in this case that a work stoppage due to a strike of employes was a condition beyond the control of the parties to the same extent as breakdowns, floods and fires and that such a condition was contemplated by the language "and the like." Such having been the interpretation of these rules when they were originally adopted and nothing having transpired during the intervening years to change this application, the parties are still governed thereby. Under these circumstances, the present claim will be seen to be without merit.

The claim should be denied in its entirety.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe and employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

This claim is based on the fact that carrier, in reducing its forces, did so without complying with the provisions of Rule 27 (b) of the parties' agreement. This section of Rule 27, insofar as here material, provides:

> "Four days' notice will be given employes affected before reduction is made. . . ."

Admittedly this notice was not given.

The factual situation out of which this claim arose occurred at 8:00 A. M. on Sunday, March 9, 1952 when, without advance notice, certain operating employes of the carrier, consisting of engineers, firemen and conductors, went out on strike. On that part of carrier's system affected thereby all operations conducted by these employes ceased. It was immediately thereafter that carrier put into effect the reduction of forces herein involved. Because of the strike, which created an emergency beyond carrier's control, there is no question as to carrier's right to reduce its forces when the work for them to perform no longer existed.

There are no qualifications of, nor exceptions to, the four days' notice requirement contained in Rule 27 (b), nor do we think any exceptions or qualifications thereto are inherent in the rule without their being either contained therein or in some other provision of the parties' agreement which relates thereto. See Awards 372 and 1701 of this Division and 6188 of the Third Division. In this respect we have examined the numerous decisions and awards cited by the parties and with the possible exception of one early decision, we find they all hold that strikes, or results thereof, do not relieve carrier from fulfilling such requirement.

On the basis that the strike created an emergency beyond its control carrier seeks to bring itself within Rule 30 of the parties' agreement, claiming that this Rule is a qualification of Rule 27 (b). Rule 30 provides, insofar as here material, as follows:

> **"Accidents to Shop Equipment.** Employes required to work when shops or any department thereof are closed down due to breakdown in machinery, floods, fires and the like, will receive straight time for regular hours, and overtime for overtime hours."

Rule 30 deals specifically with situations where work ceased to exist because of accidents to shop equipment. We think, to that extent, it is a qualification of Rule 27 (b) when a situation arises to which it has application. When Rule 30 has application we do not think the carrier is required to give employes, whose services are no longer needed because the work they normally perform has ceased to exist, the four days' notice required by Rule 27 (b). It can release them immediately but if it should require any employe or employes affected thereby to perform work during the period such condition continues to exist it must pay them according to the provisions of Rule 30. See Award 1701 of this Division.

We can only apply Rule 30 to situations covered thereby. In that regard we call special attention to the fact that the rule involved in our Award 1701 contained the express language when shops or yards are closed down

"Due to Emergencies." Here the title to Rule 30 refers to "Accidents To Shop Equipment." Significantly the rule refers to three specific situations that would have that effect namely, breakdown in machinery, floods and fires. However carrier seeks to bring itself within the language "and the like." In the sense here used that language relates to conditions similar to those specifically referred to in the rule itself; that is, conditions which result in the shop equipment being put out of physical use. By no logical reasoning can a strike be said to have that effect nor can it be said that it results in an accident to the shop equipment. In fact, the physical equipment was fully capable of being used. No situation existed to which Rule 30 has application.

Under the situation existent on the carrier it may seem extremely harsh to require payment of this claim but we can only interpret and apply the provisions of the agreement the parties have entered into. We have no equity powers to relieve from a harsh situation nor is it our prerogative to rewrite the rules of an agreement by means of an award.

It should be understood that individual claims should be limited to the time such claimant actually lost from his regular assignment by reason of the carrier's failure to give the notice. In no instance should such allowance be for more than four days.

AWARD

Claim sustained but individual rights of any claimants affected are limited as in the Findings set forth.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1954.