

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12750
Docket No. 12686
94-2-93-2-76

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen/Transportation
(Communications International Union
(
(Midsouth Rail Corporation

STATEMENT OF CLAIM:

- "(a) The Midsouth Railroad violated the Agreement when it failed to properly compensate all carmen affected by the National Freight Lock-out.
- (b) The Carrier will now compensate all carmen who were not properly paid on July 10, 1992, in an amount equal to what such employees would have earned had they not been prohibited by Carrier from performing regular service.
- (c) Proper payment, as outlined above, will also restore any and all benefits which would have normally been provided."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Parties to said dispute waived right of appearance at hearing thereon.

This claim was initially filed on August 31, 1992. The Organization claimed that the Carrier failed "to provide Carmen in the Midsouth with proper compensation for time lost due to the national freight rail lockout of June 25 and 26, 1992." The Organization noted that on June 24, 1992, the Carrier abolished certain Carmen positions effective at 7:00 a.m. June 25, 1992. It claimed that the Carrier's action, when "no labor dispute, Picketing or threat of picketing existed, "violated Rule 6 - Days work/work week and Rule 24 - Reducing Work.

On September 16, 1992, the Carrier denied the Organization's claim, asserting that it did not lock out its employees and did not suspend its operations. It claimed that, because various connecting Carriers had shut down due to lockouts on those properties, its business was quickly reduced after the first day. The Carrier went on to note that it made selective force reductions in proportion to its decrease in business. Moreover, it asserted that the events were of an emergency nature as contemplated by Rule 24 and as further evidenced by the action taken to end the labor dispute.

In order to place this dispute in its proper perspective, certain observations are in order. Effective at 12:01 a.m. on June 24, 1992, the International Association of Machinists and Aerospace Workers ("IAM") began a strike against the CSX Transportation Railroad. This resulted in a decision by a large number of Class 1 rail freight Carriers to "defensively" shut down their operations.

The Midsouth is a small Carrier, dependent upon major Carriers to interchange with it. Therefore, when the interchanges ceased or were curtailed, the Carrier's business was drastically reduced. In addition, it could not move traffic off its line of road to its major interchange partners.

On the property, the Carrier stated that an emergency condition existed and, therefore, it could properly abolish positions pursuant to paragraph (f) and (g) of Rule 24 - Reducing Forces, without five (5) days advance notice. Those paragraphs read as follows:

"(f) Advance notice to employees shall not be required before abolishing positions under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire of labor dispute other than as covered by paragraph (g), provided such conditions affect company's operations in whole or in part.

Such abolishments will be confined solely to those work locations directly affected by any suspension of operations. If an employee works any portion of the day he will be paid in accordance with existing rules. When the emergency ceases, all positions abolished must be re-established, with former occupants returned to their respective positions and said position need not be rebulletined. If the emergency conditions described herein terminate within seven days, employees will be entitled to return to their former positions at their next usual starting time not less than six hours after the emergency terminates; if the emergency conditions extend longer than seven days, employees will be entitled to return to their former positions at their usual starting time within forty-eight hours after the emergency terminates.

- (g) Advance notice to employees before positions are abolished shall not be required where any suspension of the company's operations in whole or in part is due to a labor dispute between the company and any of its employees."

We find for the Carrier in this dispute. On the property, the Carrier stated that it was forced to curtail its operations because of the nation-wide strike and that it created an emergency within the meaning and intent of Rule 24. The Organization on the property did not contest or rebut the Carrier's position and, therefore, it stands as accepted fact. We therefore, must deny the claim. The Carrier properly applied Rule 24.

AWARD

Claim denied

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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National Railroad Adjustment Board
By Order of Second Division

Dated at Chicago, Illinois, this 13th day of September 1994.