Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6611
Docket No. 6467
2-SLSW-CM-'74

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 45, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(St. Louis-Southwestern Railway Company

Dispute: Claim of Employes:

1. That the Carrier violated the terms of the current agreement when bulletin dated July 26, 1971, abolishing two carmen assignments and two carmen helper apprentice assignments and bulletin dated July 28, 1971, abolishing one carman assignment and one carman helper apprentice assignment, posted at Texarkana, Texas, did not provide for five working days advance notice as required by the rules of the current controlling agreement.

2. That the Carrier be ordered to compensate Carman Gene Ward, sixteen (16) hours, Carmen Helper Apprentices George Robinson, thirty two (32) hours, W. R. Nichols, thirty two (32) hours, R. V. Barteet, thirty two (32) hours and R. D. Nichols, thirty two (32) hours at the pro rata rate.

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 or 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.

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

The Organization in this dispute alleges that Carrier violated the Agreement by abolishing Claimants' positions by bulletins dated July 26 and July 28, 1971 without five working days advance notice. The circumstances in this matter relate to the selective series of strikes by the United Transportation Union, some of which began on July 16th and others began on July 24 and July 30th. This Carrier, although not struck, promulgated certain rule changes unilaterally on July 16th (simultaneously with many other carriers). These rule changes were contained in Carrier's Section 6 Notice which had been served about November 7, 1969. The national labor dispute was settled on August 2, 1971 with a resumption of activity on the struck lines following, and a restoration of the employees involved herein to their former assignments.

Carrier relies on the provisions of Article II of the April 24, 1970 Agreement,

claiming that because of the labor dispute Claimants were not entitled to advance notice. Article II provides:

"ARTICLE II - FORCE REDUCTION RULE

Insofar as applicable to the employes covered by this agreement Article VI of the Agreement of August 21, 1954 is hereby amended to read as follows:

(a) Rules, agreements or practices, however established that require advance notice to employees before temporarily abolishing positions or making temporary force reductions are hereby modified to eliminate any requirement for such notices under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire or labor dispute other than as covered by paragraph (b) below, provided that such conditions result in suspension of a carrier's operations in whole or in part. It is understood and agreed that such temporary force reductions will be confined solely to those work locations directly affected by any suspension of operations. It is further understood and agreed that notwithstanding the foregoing, any employee who is affected by an emergency force reduction and reports for work for his position without having been previously notified not to report, shall receive four hours' pay at the applicable rate for his position.

(b) Rules, agreements or practices, however established, that require advance notice before positions are temporarily abolished or forces are temporarily reduced are hereby modified so as not to require advance notice where a suspension of a carrier's operations in whole or in part is due to a labor dispute between said carrier and any of its employees."

Carrier repeatedly asserts that there was a labor dispute between Carrier and its employees, but has not substantiated that thesis. Certainly the filing of a Section 6 notice and continued negotiations do not fulfill that requirement. Under the language of Article II (a) the emergency condition of a labor dispute may be defined as the culmination of disagreement resulting in either a strike or lockout, or conditions approximating such work stoppages. Since there was no evidence of a work stoppage affecting Carrier, the provisions of Article II (b) do not apply. Article II (a) specifies that force reductions caused by emergencies including labor disputes (not involving Carrier's employees) "... will be confined solely to those work locations directly affected by any suspension of operations". On the property Carrier presented absolutely no evidence that the work at the point Claimants were employed was affected in any way by the work stoppage on feeder lines or strikes at any other Carrier. Carrier attempted in its submission to rectify this omission by presenting certain new information: it is well established that new evidence not presented on the property cannot be considered when the matter is reviewed by the Board (See Awards 19623, 11939, 12388, and 16061).

Carrier contends that the issue in this docket has already been decided in a series of Awards. Awards 6411, 6412, 6431, 6473, 6475, and 6513 all deal with circumstances in which the Carrier's own employes were on strike and other employes were furloughed - complete cessation of operations were involved. The instant case is clearly quite different. Award 6462 resulted in a denial without prejudice based on this Board's inability to interpret law, such functions being reserved to the courts. Awards 6482, 6483 and 6514 all involve the suspension of all activities due to a strike on other carriers; clearly distinguishable from this case. In Award 6560 we found that the requirements of Article II were satisfied through a suspension in part of the Carrier's operations, caused by fewer cars and trains being interchanged with a struck railroad. Such evidence is absent in this case. It should be noted, however, that the burden is upon Carrier to establish that reduced operations which may be interpreted to be a suspension of operations in part, are directly attributable to the work stoppage ("labor dispute") and not other causes.

In this dispute, Carrier has not produced evidence to demonstrate that Article II is applicable. Claimants were entitled to five working days advance notice as provided by the rules of the Agreement. There was no emergency involving this Carrier, insofar as this record is concerned.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of January, 1974.