Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8844
Docket No. 8804
2-CR-MA-'81

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Consolidated Rail Corporation

Dispute: Claim of Employes:

1. On March 16, 1979, the Consolidated Rail Corporation violated Rule 1 and the Contract Agreement of the controlling Agreement, by sending home the first shift at twelve noon and not allowing the second shift to work because of their alleged emergency.

2. That, accordingly, Machinists G. Webb and et al, on first shift, be paid 3.5 hours pay at the prevailing Machinist rate of pay, for compensation lost.

3. That, accordingly, Machinists S. Hosa and et al, on second shift, be paid eight (8) hours pay at the prevailing Machinist rate of pay, for compensation lost.

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 facts in this case are relatively undisputed. On Friday, March 16, 1979, at approximately 11:00 a.m. a construction company working on a sewer line in the vicinity of the Carrier's Collinwood diesel locomotive shop severed an underground power line causing a power outage. The power was not restored until 4:00 a.m. Monday, March 19. The shop operates on a Monday through Friday basis with two shifts each day. As a result of having no power the Carrier sent the first shift workers home at approximately 12:01 p.m., approximately 3½ hours prior to quitting time. Some of the second shift workers were contacted and told not to come in. Those who could not be contacted and reported to work were sent home upon arrival, however, were paid for four hours pay pursuant to paragraph A of the February 19, 1970 Agreement. The 1st shift employees were not paid for the remainder of their shift and the second shift employees were not paid for their shift except some of the employees were paid for four hours as mentioned above. The claim is an attempt to recover these amounts so that each employee would receive a full eight hours pay for March 16.

The pertinent contract language reads as follows:

> "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 (4) hours' pay at the applicable rate of his position."

Under this rule it is clear that the Carrier is not obligated to give any advance notice before making a temporary job abolishment or force reduction in the event of an emergency. Both parties agree that the critical question is whether the situation that existed on March 16 constituted an "emergency" within the meaning of paragraph A.

The Organization makes the following arguments:

> "The threshold question then, in this instant dispute, is - did the occurrence, the careless cutting of the power line, constitute an emergency condition, as an emergency was contemplated by the framers of the Agreement? We think not. Support of this position is taken from typical examples of Emergency Conditions cited in the Agreement, "Flood, snow, storm, hurricane, tornado, earthquake or fire", which examples of emergency typify situations over which there is little or no control, unforeseen circumstances of events, acts of God. Extending the application of this reasoning would possibly include in the contemplated definition of emergency such as typhoon, cyclone, plague, tidal wave, toxic chemical in the atmosphere from storage tank leakage or explosion resulting in an area evacuation, etc. All of the conditions stipulated thus having an immediate and unquestionable adverse affect to the operations of the Carrier and the safety of its employees.

"In its construction the Agreement recognizes that not all situations which are of an adverse nature are emergency situations and this is supported by the provision of the controlling agreement stipulating "Labor Dispute" as an emergency condition and provides "B" of the Agreement as the vehicle for its applicability.

In the instant dispute, none of the factors governing what constitutes an emergency are identifiable, thus no emergency condition existed and the Carrier's implementation of an emergency force reduction was unwarranted and a violation of the Agreement."

The Carrier argues:

"It has been the contention of the Employees on the property that the above cited Rule has no bearing on the case in point because the power outage was not caued by a flood, snow storm, hurricane, tornado, earthquake, fire or labor dispute. It is true that the power outage was not caused by any of these specific reasons, however the key words in Paragraph "A" above are "such as"; it is abundantly clear that these are merely representations of emergencies, and are not, nor were they meant to be by the drafters of the Agreement, the sole conditions which would constitute an emergency. It is easily discernible that emergencies can be brought about in numerous ways, and not singularly by the reasons illustrated. The Dictionary defines an emergency as, "An unforeseen combination of circumstances which calls for immediate action". This is exactly what confronted the Carrier on March 16, 1979, at Collinwood Diesel Locomotive Shop. The power outage was certainly unforeseen; was something over which the Carrier had no control; and called for immediate action."

Both arguments recognize that the rule does not limit its application to only the examples used. See, for instance, Third Division Award 15607. While the rule doesn't limit its application to the examples used it must be recognized it does limit it to like or similar situations. These examples do give some guidance as to the elements or characteristics that would distinguish between a variety of potentially arguable "emergencies" and those the parties intended to be covered in the application of the rule.

The language in this case is difficult to interpret. Generally, the word emergency would mean, as the Carrier stated, any unforeseen situation which required immediate action. This general definition is somewhat limited by the use of some of the examples used which suggest the word is being used to cover emergencies that tends to be significantly serious. Some of the examples (flood, snowstorm, hurricane, tornado, earthquake) imply that the parties only intended to exempt naturally based emergencies or what might be referred to as acts of God. If the examples stopped there it would be a different situation but

the ambiguity of the language is increased even more because the examples also include man-made emergencies as well as fires (which could be both man-made or an act of God) and labor disputes. Either of these examples could cause suspension of the Carrier's operations. Even the Organization's arguments allow that man-made or non-nature emergencies other than those listed in the rule might possibly be covered.

In this particular instance, it is the Board's opinion that the rule can be reasonably interpreted to include an emergency such as the instant one. The Organization has failed to convince us that in the face of the ambiguous language of the rule that the writers of the Agreement intended to specifically exempt situations such as the instant one from the meaning of the term "emergency".

A W A R D

Claim denied.

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 9th day of December, 1981.