

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Form 1

Award No. 12787
Docket No. 12776
94-2-93-2-154

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE:

(Brotherhood Railway Carmen/Division
(Transportation Communications
(International Union
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(Elgin, Joliet and Eastern Ry. Co.

STATEMENT OF CLAIM:

- "1. That the Elgin, Joliet and Eastern Railway Company violated the current Working Agreement, when it failed to properly compensate carmen R. Bross, P. Siebal, D. Longoria, E. Bishop, J. Corrales, J. Arbogast, F. Powell, J. Stingley, C. Thomas, B. Russel, D. Smythe, R. Leyba, S. Minton, B. Rushing, F. Sloboda, D. Miller, J. Schiessle, and H. Kazmierczak all at the current pro rata rate of pay for June 25 & 26, 1992 affected by the National Freight Lock-Out.
2. That the Elgin, Joliet and Eastern Railway Company be ordered to compensate all carmen in above item one (1) who were not properly paid on July 9, 1992, in an amount equal to what such employees would have earned had they not been prohibited by the Elgin, Joliet and Eastern Railway Company from performing regular Carmens work, who all were available, qualified and willing to work.
3. 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.

The International Association of Machinists (here IAM) was released by the National Mediation Board and was free to invoke "self help" in June 1992.

This Carrier was not a party to the national negotiations. On June 24, 1992, the IAM instituted a strike against CSX Transportation, Inc., which resulted in other carriers (who had participated in national handling) imposing an employee lock-out. On June 24, this Carrier started abolishing Carmen positions, since it asserted that it had been directly affected by a suspension of operations with other carriers caused by the lock-out.

On July 7, 1992, the Carrier's Director of Labor Relations advised the Organization that the "defensive lock-out" by other carriers, including all of the major railroads with which Carrier interchanged, had an immediate adverse impact on this Carrier and it implemented an emergency force reduction on June 25, 1992.

On August 18, 1992, a claim was submitted concerning the refusal to permit certain employees to work on June 25 and 26, 1992. The Organization conceded that the Carrier notified local representatives and employees on June 24, 1992 of the Carrier's abolishing of positions, effective 6:00, June 25, 1992.

The Organization denied that there was any emergency as that term is usually contemplated.

Service was resumed on June 26, 1992 and all employees were returned to their same positions.

The Carrier relied upon Rule 83(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."

The Organization replied that the Carrier was not involved in a labor dispute between it and any of its employees.

On November 4, 1992, the Carrier advised the Organization's General Chairman of certain statistics concerning cars received at interchanges. On June 23, 1992, prior to the IAM strike against CSX, there were a total of 517 cars received. On June 24, that number dwindled to 55 and, on June 25, there were no cars received. On June 26, 1992, the day that Congress passed a bill to abolish the strike, the number of cars received reverted to 209.

The record contains nothing to indicate that the Organization submitted contrary evidence while the matter was under consideration on the property.

The Carrier cited a number of Awards which it argues permit the kind of reduction as was evidenced herein. It stresses Second Division Awards 6560 and 5895, as well as Third Division Award 20059.

The record does not seem to raise a significant issue concerning the identity of three individuals who were not given emergency furlough vis-a-vis the furloughed employees. As we have reviewed the record, we find that the Carrier established a statistical basis for its action. To be sure, the information was apparently not given to the Organization until the final letter of declination. We would prefer that said information concerning the specific merits of a dispute be distributed to an organization at an earlier date; however, the information was supplied while the matter was under consideration on the property. The Organization did not rebut it.

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A W A R D

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois this 17 day of November, 1994.