Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13040
Docket No. 12994
96-2-95-2-18

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

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers
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(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

"1. The Carrier violated controlling Agreement dated July 16, 1992, Article III and Agreement dated August 21, 1954, when they furloughed Machinists C. Thomas, P. Daley, H.C. Johnson, J. Manion and J. Sadler on day on (sic) January 17, 1994, at the Brooklyn Shops, Madison, IL, due to an alleged snow emergency.

2. That, accordingly, the Carrier be ordered to compensate the Machinists mentioned above for eight (8) hours wages at the current rate of pay."

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 Organization alleges that on January 17, 1994, the Carrier furloughed Claimants without proper notice. Central to its position the Organization disputes any emergency condition. It notes that numerous employees worked, that a five inch snowfall did not hamper operations or warrant an emergency and presents at the later stages on the property a newspaper account and letter from Claimant as proof. That letter asserts that in 20 years, even with a 14 inch snowfall, there had never been a shut down of operations.

Carrier objects to the final newspaper and letter proof offered as procedurally invalid. It argues that they were ~~been~~ interjected into the dispute at a date too late for consideration, i.e., over three months after the letter confirming a conference on the property. The Carrier argues procedurally that this "new 'purported evidence' was not rendered timely and violates the Agreement between the parties, as same has been historically applied on the property...."

The Carrier denies any Agreement violation. The Carrier asserts that there was a snow emergency which forced the suspension of its operations. It argues that it was not in violation of the Agreement. The Carrier maintains that it met the conditions of Article VI of the August 21, 1954 National Agreement.

This Board has long held that all material, argument, evidence and documents are proper if they have been exchanged on the property prior to the date of the Notice of Intent to file an ex parte Submission. The disputed material clearly proceeded that date by months. There was sufficient time for the parties to develop their responses and attempt a resolution. Only the Board's receipt of the Notice of Intent closes the record (Third Division Awards 30782, 24757, 22762, 20597, 19832). The Carrier's procedural objection is unfounded and rejected.

This dispute centers on Article III of the National Agreement dated June 5, 1962 which requires advance notice before position abolishment. It provides an exception thereto in Article VI of the August 21, 1954 Agreement which reads in pertinent part:

> "Rules, agreements or practices ... that require more than sixteen hours advance notice before abolishing positions ... are hereby modified so as not to require more than sixteen hours such advance notice under emergency conditions such as ... snow storm,... provided the Carrier's operations are suspended in whole or in part and provided further that because of such emergency the work which would be performed by the incumbents of the positions to be abolished ... cannot be performed."

It is the Organization's burden to demonstrate by probative evidence that the Carrier's operations were not under an emergency. The Organization must demonstrate that operations were not suspended in whole or in part, or that there was work for the Claimants to perform. The Organization challenged the inclement weather alleging that five to seven inches of snow should not have resulted in the Claimants' furlough. However, it has neither rebutted the Carrier's presentation of conditions, nor provided probative evidence that Claimants should have been allowed to work because they had work that could be performed.

The Carrier asserted that snow and high winds required it to suspend its whole third shift operation. Employees permitted to work were those involved in snow removal, those repairing said equipment, and those involved in protecting locomotives from freezing up. According to the Carrier, the shop engines which were due in were unable to arrive. A search of the record by this Board fails to reveal any probative evidence presented by the Organization challenging these assertions.

Accordingly, the claim must fail for lack of proof. The Carrier's emergency force reduction was proper. The central issue is not how heavy the snowfall or winds may have been, but whether the Carrier's operations were effected. The evidence before this Board shows that conditions effected shop engines, the shop and general operations. As such, there is no evidence to demonstrate that Article III was violated. The Carrier's invoked emergency reduction under these conditions was proper.

AWARD

Claim denied.

ORDER

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 21st day of August 1996.