

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION****Award No. 13137
Docket No. 12931
97-2-94-2-82**

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood of Railway Carmen, Division of
Transportation Communications International Union**
(**CSX Transportation, Inc. (former Chesapeake and
Ohio Railway)**)

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

- 1. That the carrier violated Rule 27 of the Shopcraft's Agreement and Article II of the April 24, 1970 Agreement when, on August 31, 1993, the Carrier furloughed its regularly assigned Carmen employees on the second shift and third shift at Newport News, Virginia without having given the required five (5) days advanced notice when no emergency conditions existed.**
- 2. Accordingly, the carrier be instructed to pay carmen R. G. Wood, ID #618915; G. W. Rowe, Jr., ID #619577; M. D. Morris, ID #620978; G. L. Sarvis, ID #620980; W. R. Thomas, ID #621087; R. R. Walker, ID #623171; J. H. Chapman, ID # 624342; E. G. Damron, ID #627564; T. L. Proctor, ID #621295; R. L. Bolden, ID #618222; C. Brown, Sr., ID # 618889; R. L. French, ID #627537; T. Williams, Jr., ID #619460; J. L. Baines, ID # 091730; H. H. Wood, Jr., ID #604075; C. Corbin, Jr., ID #609499; G. L. Brewer. ID #619451; D. W. Hudson, ID #613299; and C. C. Eley, Jr., ID #609549 eight hours at the applicable Carmen's 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 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 were given due notice of hearing thereon.

On August 31, 1993, the National Weather Service issued a warning that Hurricane Andrew could possibly strike landfall in Newport News and the surrounding coastal areas of Virginia. Because of this hurricane warning, the Carrier suspended terminal operations for the second and third shifts and temporarily furloughed the employees assigned to those shifts. By 7:00 A.M. the following day, September 1, 1993, the National Weather Service announced that the hurricane threat had passed. The Carrier notified the first shift employees by telephone to return to work and resumed normal operations.

On October 25, 1993 the Organization filed a claim on behalf of the Carmen assigned to the second and third shifts at Newport News, Virginia, alleging that the Carrier failed to provide them with five days' advance notice of suspension of operations as required by Rule 27 of the Shopcrafts' Agreement and Article II of the April 24, 1970 Agreement. The Carrier denied the claim asserting that operations were suspended due to the National Weather Service warning to the residents of the Newport News and surrounding coastal area that a hurricane was heading in that direction. The Carrier contends that it viewed suspension of operations the safest course of action to protect its employees in the event Newport News was struck by Hurricane Andrew.

Rule 27 of the Shopcrafts' Agreement, entitled REDUCTION IN FORCES, provides, in pertinent part, as follows:

- “(b) Except as provided in Paragraph (g) of this rule, five working days, notice will be given the men affected before reduction is made (emphasis added), and lists will be furnished the local committee....
- (g) Effective November 1, 1954. When abolishing positions or making force reductions, not more than sixteen hours advance notice will be

required under emergency conditions such as flood, snowstorm, hurricane, earthquake, fire or strike, 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 or the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed....”

Rule 27 was amended by Article II - Force Reduction Rule - of the April 24, 1970 National Agreement as follows:

“Insofar as applicable to the employees 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.”

The central question to be resolved in this dispute is whether “emergency conditions” existed when the Carrier decided to suspend operations in Newport News and temporarily furlough Carmen assigned to the second and third shifts. If emergency conditions existed the Carrier was not required to give the Carmen the five days advance notice required by Rule 27.

It is instructive to note that when the Carrier made the decision to suspend operations at the Newport News terminal, the National Weather Service was reporting that Hurricane Andrew could hit the area that evening. That the hurricane did not strike the Newport News area is irrelevant. Based on the latest National Weather Service reports the Carrier had reason to believe that its employees at Newport News could be jeopardized by Hurricane Andrew. Therefore, this constituted an emergency condition relieving the Carrier of its obligation to give employees five days' advance notice of a temporary reduction in force.

That the Carrier's operations at Portsmouth and Richmond, Virginia, were not curtailed because of the impending hurricane had no bearing on the decision by management at Newport News to temporarily reduce its forces because of the threatened hurricane. That decision was based on National Weather Service reports that Hurricane Andrew could hit Virginia the evening of August 31, 1993. In this Board's opinion, this constituted an emergency condition that justified the Carrier in temporarily reducing Carmen on the second and third shifts without giving them five days' advance notice. The claim is denied as a result.

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 30th day of July 1997.