Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No.
SECOND DIVISION Docket No.
2-ICG-CM-'7

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

Parties to Dispute: (System Federation No. 99, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Illinois Central Gulf Railroad Company

Dispute: Claim of Employes:

1. That under Rule 28 of the current Agreement, the Illinois Central Gulf Railroad Company on August 10, 1976, improperly furloughed and suspended from service fifty-four (54) employes of the Carmen's Craft who are employed at the Car Building Shop, Centralia, Illinois, by not giving the employes a proper 5-day Notice, as required by Rule 28 of the current agreement.

2. That the Illinois Central Gulf Railroad Company be ordered to compensate the twenty-one (21) Carmen, twenty-nine (29) advanced Carmen Apprentices and four (4) Carmen Helpers for all time lost from August 10, 1976, to the date they were restored to service, as shown on Attachments A, B, C & D.

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 material facts out of which the dispute arose are not in controversy. Carrier operates at Centralia, Illinois, a major car building facility, at which employes from various crafts work in the building and rebuilding of railroad freight cars and equipment. Of the five tracks in the long car shed three are used for heavy rehebilition and two are used for an assembly line type of new car building. Bad order cars are grouped on a stub track and repaired as time, space and manpower permit.

In 1976 Carrier was involved in a major New Car Program of building one-hundred new 100 Ton gondola cars at Centralia. Employees from many different crafts, including some 80 Carmen were involved on that project.

An integral part of the new car construction line was a 1000 Ton joining press used to fabricate body bolsters, cross bearers and side stakes. That press was operated by members of the Blacksmith Craft.

On Tuesday, August 10, 1976, the 1000 Ton press broke down and Carrier was unable to repair it. The machine was under warranty by an outside concern which had recently rebuilt it, and Carrier called in experts from that Company. At 2:00 PM on August 10 Carrier announced that all of the Claimants would be laid off at the close of business and the New Car Program suspended until the press was repaired. The remaining 20 employes in the Carmen Craft and the employees in the other crafts continued to work during the shutdown of the press and were utilized to perform other work including repairs of bad order cars. Repairs to the press were completed and the Claimants recalled to work by Monday August 16, 1976.

In the instant claim the Organization, on behalf of Claimants, maintains that Carrier violated Rule 28(a) of the Schedule Agreement by furloughing Claimants without five (5) days advance notice. Carrier responded that Rule 28 is superceded in this case by Article II of the April 24, 1970 National Agreement, because the situation required an "emergency force reduction". Thus, reduced to its essence, the question for this Board is whether the exculpatory provisions of Article II (a) are applicable in this case. If so then Carrier must prevail, if not then the claims must be sustained.

The facts of record establish prima facie failure to give the 5-day notice required by Rule 28(a). But Carrier asserts the affirmative defense of "emergency" which is codified in Article II. Accordingly, Carrier has the burden of proving that the conditions specified in Article II have been met. This requires establishing as a condition precedent the occurrance of an event or circumstance embraced by the term "emergency condition" as it is used in that Article. It also requires establishing the proximate causation of the condition subsequent i.e., suspension of Carrier's operations in whole or in part. Award 2-6611.

The first question for consideration is whether the breakdown of the 1000 Ton press constitutes an "emergency condition" as that term is used in Article II. The contract clause does not expressly define the phrase, although several examples are listed:

> "FORCE REDUCTION RULE
>
> 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. ***"

Each of the parties has marshalled a number of awards and prior decisions, all of which we have reviewed. None of the alleged precedents is directly on point. Most deal with the interpretation of the word "emergency" in a contract clause other than Article II, See eg, Awards 1-16 369, 2-157, 2-4459, 3-10965, 3-11043. In all of the cited cases, the contract clauses under scrutiny simply mentioned "emergency" or "emergency conditions" without example or elaboration. In those cases, the Boards utilized the well established maxim of contract interpretation which holds that, absent some other indication of the contracting parties' interest, normal dictionary usage would prevail in construing contested language. The teaching of those cases is that in the absence of some other evidence of intent the phrase "emergency conditions" would mean "an unforeseen combination of circumstances requiring immediate action". Webster's New World Dictionary. Awards 3-10839, 3-10965, 3-11043. In the present case we do not deal solely with the bare unadorned phrase "emergency conditions" because the contracting parties have included examples of some of the conditions they intended to be covered by the emergency force reduction clause, to wit "... such as flood, snow storm, hurricane, tornado, earthquake, fire or labor dispute..." (other than a labor dispute between Carrier and its own employees).

The fact that machine breakdown is not listed among the examples in the provision does not automatically preclude further consideration of the question of its coverage under Article II. As has been pointed out elsewhere, the words "such as" are words of description and not necessarily words of preclusion. Award 4-2823. The listing of specific examples can sometimes provide a basis for infering that the parties intended only items of the same nature or class to be covered by the general terms of a contract clause. This principle of contract construction is known as the "Doctrine of Ejusdem Generis". However, that doctrine is of no help here because the examples listed are not homogeneous ie. inclusion of the item "labor dispute" among acts of natural catastrophe. At bottom line, therefore, the interpretation of Article II is left to apply on a case by case basis the general usage theory or dictionary definition principle utilized in so many of the earlier Awards.

In the particular facts and circumstances of this case we are persuaded that the unanticipated breakdown of the 1000 Ton press, upon which the entire assembly process was dependent, did constitute an "emergency condition" within the common ordinary meaning of that term. We hasten to point out that every machine malfunction cannot meet the definitional test:"1) The condition or situation must be unexpected and not preventable by the exercise of due, proper judgment, discretion and action; 2) The situation demands immediate remedial action". Award 1-16 369.

But in our considered judgment the record supports a conclusion that breakdown of the 1000 Ton press in this case does meet that test. Nor can there be any serious argument that Carrier's operations were suspended in part as a direct result of that equipment failure. Construction of new car assembly was dependent upon the press stamping out materials for car building. Carrier found work for 20 of the Carmen and the employees in other crafts, but could not use Claimants. The evidence is disputed but we believe the preponderance supports Carrier's assertions that it took all reasonable steps to provide work for the employes during the shut down of the press. Given the facts of record in this particular case the claims must be denied.

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 V. Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of September, 1979.