

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13006
Docket No. 12834
96-2-93-2-199

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Brotherhood Railway Carmen Division
(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM: "Claim of the Committee of the
Union that:

1) That the Indiana Harbor Belt Railroad Company violated the current Working Agreement when it failed to properly compensate the following Carmen: A. WOLAN, J. GOMEZ, W. CHAPPEY, J. LUNA, P. BICANIC, D. JENKINS, C. JACKOVICH, H. JULIAN, W. DAVIS, N. WAGNER, K. BYNUM, W. PARKS and T. MOORE, at the current pro rata, rate of pay from June 25 through 28, 1992, affected by the National Freight Lock-out.

2) That the Indiana Harbor Belt Railroad 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 Indiana Harbor Belt Railroad Company, from performing regular Carmens work, who were all 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.

This dispute centers on interpretation of Article II - Force Reduction Rule, which reads in pertinent part 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, [not relevant here], 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...."

In this instance, the positions of 13 of 15 Repair Track Carmen and Car Inspectors at the Carrier's Gibson Terminal were temporarily abolished commencing June 24, 1992. All positions were restored by June 29, 1992.

The Carrier demonstrated on the property that, because of curtailment of operations of other Carriers making use of the Carrier's services, availability of work was substantially reduced for a short period. Based on the demonstrated facts, the Board finds the Carrier properly exercised its rights under Article II (a) in reference to "labor dispute[s]" elsewhere, which resulted in "suspension of a carrier's operations...in part".

As stated in Second Division Award 6560, and echoed in numerous other Awards:

"The Organization contended that Article II, Section (a) of the April 24, 1970 Agreement did not apply because certain conditions, specifically a suspension of the operations of the Carrier in whole or in part due to an emergency, did not exist; therefore the 11 Claimants could not be furloughed without advance notice. This Board does not agree.

* * *

It appears to this Board that the need for a reduction in service due to fewer cars and trains being interchanged with a struck railroad is in fact suspension of part of a Carrier's operations and satisfies the requirement of Article II."

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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 10th day of July 1996.