



Award No. 15607
Docket No. TE-14445

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)**

CHICAGO & ILLINOIS MIDLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago and Illinois Midland Railway, that:

1. Carrier violated Article III of the National Agreement of June 5, 1962, when it failed to give the following employes five (5) working days' advance notice before abolishing their respective positions:

D. M. Oliver — 2nd Shift Teleg.-Clerk, Taylorville, Illinois
L. D. Sunley — Rest Day Relief Position No. 4
J. W. Dowell — 2nd Shift Telegrapher-Clerk, Havana, Illinois
J. A. Condor — 3rd Shift Telegrapher-Clerk, Havana, Illinois

2. Carrier shall, because of the violation set out in paragraph 1 hereof, compensate each of the above named claimants eight (8) hours' pay at the rate of the position occupied for each date hereinafter set forth:

D. M. Oliver — for January 25, 26 and 27, 1963
L. D. Sunley — for January 26, 27, 28 and 29, 1963
J. W. Dowell — for January 25, 28 and 29, 1963
J. A. Condor — for January 25, 26 and 27, 1963

3. The Carrier shall, because of their improper displacement, compensate the following employes eight hours' pay at the rate of the position occupied for each date hereinafter set forth:

C. R. Buscher — for January 25, 1963
G. R. Hinrich — for January 24, 25, 28 and 29, 1963
T. J. Rodden — for January 26, 27, 28 and 29, 1963
H. L. Hansen — for January 24, 25, 26, 27 and 28, 1963.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties hereto, effective November 1, 1946

3rd Trick
Tel-Clerk
Havana
Wed thru Sun
J. A. Condor

J. A. Condor
to Extra List
(Havana)

(*) Buscher worked vacancy on 3rd Trick
Leverman Shops Tower (1/25, 1/26
and 1/27 before displacing Sunley.

The waterways remained frozen until February 17, 1963, and normal operations were thereafter resumed. The previously abolished assignments were restored, and the employees were reassigned in accordance with the rules.

OPINION OF BOARD: The Carrier states that "a sudden drop in temperature to 15 below zero during the night of January 22 and morning of January 23, 1963, made it impossible to continue coal barge movements on the Illinois Waterways. This condition forced the Carrier to immediately discontinue its principal operation, which is the rail movement of coal from Peabody Mine No. 10 at Ellis, Illinois to Havana, Illinois, where the coal is transferred to river barges for movement to Chicago area generating plants."

Carrier states further that "as a direct result of this sudden river freeze-up . . . Peabody Coal Company Mine No. 10—in a seven day period—worked only 2 eight-hour shifts, one on January 25 when they loaded 77 cars and the other on January 28, when 53 cars were loaded."

The record further shows, in a table of road train activity prior to and during the emergency, that:

First run had 16 cars prior to, and 1 car during period
Second run had 15 cars prior to, and 7 cars during period
Third run had 17 cars prior to, and 13 cars during period
Fourth run had 6 cars prior to, and 5 cars during period

In addition, one yard engine assignment at Havana was immediately discontinued.

Carrier, believing it was faced with an "emergency," within the meaning and intent of Article VI of the August 21, 1954 Agreement, reduced its force with sixteen hours' advance notice.

So far as the facts are concerned, the sudden river freeze did effect service on the barge line, where Carrier placed the coal from Peabody Mine No. 10 and dumps it into barges. Barge service is not a Carrier operation, although its suspension adversely affected this Carrier's operations.

The weather situation did affect Carrier adversely in loss of revenue because of reduced rail traffic.

It is argued by the Organization that loss of revenue through reduction in traffic is not an "emergency" within the meaning and intent of the rules agreement.

The agreement itself describes emergency conditions:

"such as flood, snow storm, 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 positios to be abolished or the work which would be performed by the employes involved in the force reductions no longer exists or cannot be performed. . . ."

Organization says that this Carrier continued to operate, moving each and every car load to destination; however, some shipments that normally went for delivery to the barge lines were delivered to a connecting railroad.

And, there is also this assertion from the Organization:

"due to the fact coal not needed, Peabody Coal Company Mine No. 10 did not work every day, but if the coal had been needed, it would have worked and C&IM would have delivered it to connecting rail lines as it has always done in the past when river freezes.

The Chicago & Illinois Midland Railway Company did have a loss of business; however, it did not have an emergency condition at any point on its lines."

An examination of the record shows Carrier's unrefuted claim that:

"no work, which would ordinarily be performed by the 2nd and 3rd trick claimants and relief remained because of the elimination of all through freight crews out of Taylorville and drastically reduced train operations. At no time during the entire handling on the property was this aspect of the rule discussed, and not one shred of evidence has been introduced by the ORT to prove that any work remained to be performed by the former incumbents on the abolished positions."

The crucial rule here is very clear in its provision relating to emergency conditions.

"such as flood, snow storm, hurricane, earthquake, fire or strike, provided the Carrier's operations are suspended in whole or in part."

This type of rule does not mean that "emergency conditions" are limited to the six emergencies mentioned.

Certainly the Carrier was faced with "emergency conditions" and its operations were suspended to the extent indicated in the record. This resulted in a loss of revenue-producing business. This is admitted by the Organization.

Carrier states that Peabody Mine No. 10 was reduced from three shifts a day, 5 days a week, to one shift a day, 3 or 4 days a week. It also asserts three chain gangs were cut off at Taylorville, eliminating all through freight crews out of that terminal; and, a mine switcher was cut off, 2 chain gang crews at Springfield, the yard engine at Havana and a relief yard assignment were cut.

This Division, in Award 11214 (Dolnick), stated:

"A mere reduction of the work force did not alone establish an emergency. . . . There must be a showing that the operations -- the movement of trains -- was suspended in whole or in part."

There is such evidence in the record here, and a denial Award is required.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June 1967.

DISSENT TO AWARD 15607, DOCKET TE-14445

In my opinion this award, for quite obvious reasons does not give proper effect to the applicable rules; therefore, I dissent.

J. W. Whitehouse
Labor Member