

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25574
Docket Number CL-24793

Josef P. **Sirefman**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(Chicago and Illinois Midland Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(**GL-9662**) that:

1. Carrier violated the Agreement between the parties when on August 19, 1981, it issued bulletin to abolish position of Yard Clerk, Powerton, Illinois, occupied by R. J. Bailey, effective end of tour of duty August 19, 1981; such bulletin did not give at least five (5) working days' advance notice as required by Rule 19. (Carrier's File **MP-BRAC-208**)

2. Carrier shall now be required to compensate R. J. Bailey for eight (8) hours' pay at rate of Yard Clerk, each day, August 20, 21, 24, 25 and 26, 1981, as required by Rule 19 of the Agreement.

OPINION OF BOARD: The pivotal issue before the Board is whether the breakdown of a customer's equipment is an "emergency condition" within the meaning of Rule 19(a), i.e. , permitting less than five working days notice of position abolishment. The pertinent part of that Rule reads:

"Rules, agreements or practices, however established, that require advance notice to **employees** before abolishing positions or making 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 in paragraph (b) below, provided such conditions result in suspension of a carrier's operations in whole or in part."

The presence of the words 'such as' makes it clear that the stated emergency conditions are not limiting nor are they exclusive (**Third** Division Award 15607, "**This** type of rule does not mean that 'emergency conditions' are limited to the six emergencies mentioned."). Moreover, the word "strike" in this context indicates that the emergency conditions contemplated by the Parties are not confined to natural disasters, but were intended to include circumstances which can arise on the property of **or** with the equipment of a consignee. The common denominator in these disparate contractual examples is an unanticipated, **unforeseen** event over which Carrier has no control; one which results in suspension of a Carrier's operations in whole or in part.

Here Carrier could not **forsee** that the consignee's belt equipment would break down on August 17, 1981; a circumstance wholly beyond Carrier's control. What ensued **was** a suspension of Carrier's operations in whole or in part. In sum, an emergency condition within the meaning of Rule 19(a).

The Organization cites Award 123 of SBA No. 605 in support of its position that the breakdown of a customer's equipment does not qualify as an emergency condition. In this Board's opinion that Award is distinguishable from the situation at hand. There the Carrier received advance notification from a significant shipper that it **"would** substantially reduce its production to put into effect retooling operations". SBA No. 605 held that Carrier had been alerted, therefore no emergency situation existed. The instant situation is quite different. It does not involve advance notice of a customer's shutdown or reduction in production. Rather it concerns the unanticipated breakdown of a customer's equipment during production. Indeed, it is instructive that but a few days earlier, when the customer gave the **Carrier** notice of a shutdown, the Carrier followed the five working days notice requirement. The equipment breakdown in question occurred after the Carrier had resumed service to that customer.

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 Employees involved in this dispute are respectively Carrier and Employees 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.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1985.

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