

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30929
Docket No. CL-31241
95-3-93-3-305

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(Transportation - Communications
(International Union
PARTIES TO DISPUTE: (
(Chicago, Central, and Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10958) that:

1. Carrier violated the Agreement at Council Bluffs, Iowa and Waterloo, Iowa, on June 24, 25, [or] 26, 1992, or all, when it refused to permit TCU Agreement covered Clerical employees to perform service.
2. Carrier shall now compensate all TCU Clerical Agreement covered employees at Council Bluffs, and Waterloo, Iowa, who were improperly prohibited from working on either June 24, 25, and 26, or all, in an amount equal to what such employees would have earned had they not been prohibited by Carrier from performing service.
3. Carrier shall also restore any benefits which would have accrued to Claimants had they not been prohibited from working on the above dates."

FINDINGS:

The Third 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 evolved as a consequence of the June 1992 IAM strike and subsequent three-day lockouts by various Carriers. The Chicago, Central and Pacific Railroad, although not party to the dispute, abolished certain Clerical positions during the lockout. A claim was filed on behalf of the employees affected on July 21, 1992. In its denial of the claim, Carrier asserted that it had complied with the provisions of Rule 24(e) which covers abolishment of positions under "emergency" conditions.

Throughout the progression of this claim on the property, Carrier asserted that a reduction in traffic had precipitated the position abolishments, but offered no evidence to support that assertion, despite the Organization's challenge that it do so. The Organization maintains, correctly, that if Carrier wishes to rely upon the provisions of Rule 24(e) it must provide evidence that the emergency conditions specified by that Rule did, in fact, exist. (See, for example, Third Division Awards 29016, 21262 and 15858). In this case, Carrier failed to offer concrete evidence until presentation of its ex parte Submission to the Board. It is well established on this and other Boards that the Board may not consider such de novo argument in its deliberations. Accordingly, the instant claim is sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of June 1995.