

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31646
Docket No. SG-31552
96-3-93-3-481**

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

Claim on behalf of J.F. Stoner, D.W. Stoner, R.L. Bashore, L.E. Thompson, J.H. Piltz, J.D. Gannon, et al., for payment of eight hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 5-A-1, when Carrier improperly abolished the Claimants' position on June 24, 1992, and did not provide proper notice when the positions were restored. Carrier's File No. SG-500. General Chairman's File No. RM2342-105- 992. BRS File Case No. 9159-CR."

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.

Although the specific claim date is not identified in the Statement of Claim, *supra*, a review of the record reflects that this dispute involves a claim for payment of eight hours at the straight time rate of pay for Friday, June 26, 1992, on the contention that Carrier somehow violated the provisions of Rule 5-A-1 because the named Claimants did not work on June 26 and therefore did not receive 40 hours of pay for the workweek which ended June 26.

This case involves a situation which began at 12:01 A.M. on June 24, 1992, when the International Association of Machinists called a strike against the CSX Corporation. In response to this strike action by the IAM other Carriers, including CONRAIL, who were bargaining nationally with IAM posted notices to their other union-represented employees, including the Signalmen, that because of the strike action all of their positions would be "suspended temporarily for the duration of the picketing. Employees whose positions are suspended temporarily will return to their former positions at the start of the first full tour of duty following cessation of the picketing." As a result of this notice, Claimants' positions were suspended temporarily beginning June 24, 1992.

In the early morning hours of June 26, 1992, Public Law 102-306 became effective and ordered the parties to revert to their status as of 12:01 A.M. June 24, 1992. The record reflects that Carrier made the Claimants whole for time lost on June 24 and June 25. The record also reflects that the Organization was notified by Carrier at 12:30 A.M. on June 26, 1992, that the status quo had been ordered and that the Signalmen were expected to report for their first full tour of duty on June 26, 1992. There is no dispute or contradiction in the record that such a notification was, in fact, given to the Organization. Rather, the dispute argues that there was no personal notification given to the individual Claimants. The record shows that the Claimants who were scheduled to work on June 26 did not report for their positions on June 26, 1992. One of the Claimants, J.D. Gannon, was not scheduled to work on June 26 inasmuch as it was his regular assigned rest day. Nevertheless, claims were presented for all of the named Claimants requesting eight hours at the straight time rate of pay for June 26, 1992.

The claim for Signalman Gannon has no proper standing in this dispute and is summarily dismissed.

Rule 5-A-1 of the Agreement reads as follows:

"RULE 5 - HANDLING OF EMPLOYEES"

5-A-1. The established work week for all employees covered by this Agreement, subject to the exceptions contained in this rule, is forty (40) hours, and consists of five (5) days of eight (8) hours each, with two consecutive days off in each seven. The work week may be staggered in accordance with the Company's operational requirements. So far as practicable the days off shall be Saturday and Sunday. The foregoing work week is subject to the provisions which follow:

(a) The expressions 'positions' and 'work' as used in this rule refer to services, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employees.

(b) On positions the duties of which can reasonably be met in five (5) days, the days off will be Saturday and Sunday.

(c) When the nature of the work is such that employees will be needed six (6) days each week, the rest days will be either Saturday and Sunday, or Sunday and Monday.

(d) On positions which are filled seven (7) days per week any two consecutive days may be the rest days, with the presumption in favor of Saturday and Sunday.

(e) All possible regular relief assignments with five (5) days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six (6) or seven (7) day service, or combination thereof, or to perform relief work on certain days and such types of other work, under this Agreement, on other days as may be assigned.

Assignments for regular relief positions may, on different days, include different starting times, duties and work locations for employees of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employee or employees whom they are relieving.

(f) If, in positions or work extending over a period of five (5) days per week an operational problem arises which the Company contends cannot be met under the provisions of paragraph (b) of this section and requires that some of such employees work Tuesday through Saturday instead of Monday through Friday and if the Manager- Labor Relations and the General Chairman fail to agree thereon, then, if the Company nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim under this Agreement.

(g) The typical work week will be one with two consecutive days off, unless otherwise agreed between the Manager-Labor Relations and the General Chairman.

To the extent furloughed employees may be utilized under the rules of this Agreement, their days off need not be consecutive; however, if they take the assignment of a regular employee they will have as their days off the regular days off of that assignment.

(h) Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed by an available unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee. (See Appendix 'P' for trouble calls involving Maintainer's work).

(I) The term 'work week' for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employees shall mean a period of seven consecutive days starting with Monday."

The Organization's position consists solely of the argument that inasmuch as Carrier posted a notice to temporarily suspend the positions, it was required to post a notice or otherwise give individual notification to the employees to resume their regular positions.

Carrier contends that the language of the posted suspension notification when coupled with the verbal notification which it gave to the Organization representative at the end of the strike situation was sufficiently particular and informative to permit and require all employees to report for their regular assignments "at the start of the first full tour of duty following cessation of the picketing." Carrier insists that the fact that these

particular individual employees, excluding Claimant Gannon, failed to report for their regular assignments on June 26 does not place Carrier in violation of Rule 5-A-1 or any other rule of the Agreement.

The Board's review of the record in this case determines that there is no evidence or proof offered by the Organization to support their contention of a violation of Rule 5-A-1. The temporary suspension notice put the employees on alert that they would revert to their regular assignments "at the start of the first full tour of duty following cessation of the picketing."

The Organization representative was personally informed of the end of the strike situation. Activities of this type are not conducted in a vacuum. All parties involved are - or should be - aware of the happenings in such situations. Communications between Carrier and Union Representatives and between Union Representatives and the employees are commonplace and on-going. There simply is no proof in this record to support the conclusion that Carrier prevented these Claimants from fulfilling their work week as set forth in Rule 5-A-1. Accordingly, the Board finds that the claim as presented must be denied.

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 Third Division

Dated at Chicago, Illinois, this 29th day of August 1996.