Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31717
Docket No. MW-31149
96-3-93-3-162

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(MidSouth Rail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it improperly failed and refused to allow its Maintenance of Way forces to perform work on June 25 and/or 26, 1992 because of a lockout by the major rail freight Carriers on June 24, 1992 (Carrier's File No. 92-076-MW).

2. As a consequence of the violation referred to in Part (1) above, the Claimants' listed below as well as unlisted South Rail employees should be made whole for these days by allowing each employee an additional personal day or vacation day, whichever the case may be.

*	W. Brown	H. Clark	C. A. Dansby
	A. Davenport	W. Davis	C. M. Griffin
	A. B. Hickman	S. Hines	C. L. Jones
	F. Jones	H. L. Jones	A. L. Keeton
	N. D. Keeton	J. D. Luckett	J. E. McNichols
	A. Parkman	E. Parkman	E. W. Robinson
	M. W. Robinson	B. Ross	T. L. Scott
	W. E. Shelvy	W. H. Simons	M. Steele
	B. Valentine	D. W. Watts	K. B. Williams"

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all of 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 were given due notice of hearing thereon.

On June 24, 1992, as part of a national labor dispute, the International Association of Machinists struck CSX Transportation, Inc. In response, most of the nation's rail carriers closed operations and locked out their employees. The lockout lasted two days. Carrier was not a party to the dispute or to the lockout. However, Carrier did reduce its forces because its volume of traffic was curtailed severely by the labor dispute.

The Organization contends that Carrier violated the Agreement by not giving the Claimants the contractually required five days' notice. The Organization recognizes that the Agreement provides that the five day notice need not be given where there is an emergency. In the Organization's view, however, Carrier failed to prove that there was an emergency. Furthermore, the Organization argues, even if the lockout constituted an emergency, Carrier failed to prove that it prevented Claimants from performing their duties. In the Organization's view, with few or no trains running, the lockout provided ideal conditions for Claimants to perform their jobs maintaining the track.

Carrier maintains that its actions were proper under Rule 24(e) which lists labor disputes which affect Carrier's operations as an emergency which excuses the giving of notice. Carrier contends that the lockout forced it to reduce its operations severely because it was unable to interchange traffic with the closed carriers.

Rule 24(a) requires Carrier to give employees affected by a reduction in force at least five working days' written notice. Rule 24(e) provides, in relevant part:

"Advance notice to employees shall not be required before abolishing positions under emergency conditions, such as flood, snow storm, hurricane, derailments or train wreck, tornado, earthquake, fire, or labor dispute other than as covered by paragraph (f), provided such conditions affect company's operations in whole or in part. Such abolishments will be confined solely to those work locations directly affected by any suspension of operations. . . . "

The strike and responsive lockout were part of a labor dispute which, under the plain language of Rule 24(e) constituted an emergency. The labor dispute severely curtailed Carrier's operations. Prior Awards involving other crafts and this Carrier have recognized this and the record in the instant claim gives us no reason to reach a different result. See Third Division Award 30954; Second Division Award 12751.

We are not persuaded by the Organization's argument that Carrier should have taken advantage of the lack of train traffic to enable its maintenance of way forces to work on the track. The Organization has pointed to no language in the Agreement which would have required Carrier to do so. As observed in Public Law Board No. 2452, Award 6, "With fewer trains operating, the road bed did not require as much active maintenance and repairs." Carrier did maintain such forces as was needed in light of the severely reduced train traffic. It did not violate the Agreement.

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 25th day of September 1996.