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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32149
Docket No. MW-31383
97-3-93-3-396

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(MidLouisiana Rail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it temporarily abolished four (4) Maintenance of Way positions for one (1) day on June 25, 1992 (System File MW-92-1-MS/92-075-MW).
- (2) As a consequence of the violation referred to in Part (1) above, MidLouisiana Foreman J. R. Walsworth, Jr. and Machine Operators S. W. Sneed, A. D. Durbin and L. D. Knapp shall each be allowed eight (8) hours' pay, at their respective straight time rates, for their loss of work opportunity and compensation accruing thereto."

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 were given due notice of hearing thereon.

The circumstances of this dispute were directly affected by a legal strike on June 24 and 25, 1992 by another Organization against another Carrier. It was obviously apparent that the strike affected the operation of this Carrier. While working its full force on June 24, the Carrier temporarily abolished four of seven Maintenance of Way positions on June 25. These positions were restored on June 26.

Rule 21, calls for "five working days' advance written notice" in the event of force reduction. Rule 21(e) states, however, as follows:

"Advance notice to employees shall not be required before abolishing positions under emergency conditions, such as . . . labor dispute other than as covered by paragraph (f), provided such conditions affect company's operations in whole or in part. . . ." [Paragraph (f) is not applicable here.]

Third Division Award 30954 covers in full detail the same situation. In denying the claim, Award 30954 additionally relies on Second Division Award 12750 and Public Law Board No. 5427, Awards 3 and 4.

Third Division Awards 31717 and 31718 are to the same effect.

These Awards having resolved the same issue and this dispute having no individually distinguishing characteristics, there is no reason for the Board to reach a different conclusion.

AWARD

Claim denied.

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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 13th day of August 1997.