

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34020
Docket No. MW-31597
00-3-93-3-603**

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

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Elgin, Joliet and Eastern Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to allow its Maintenance of Way forces to perform work on June 25, 1992 because of a lockout by the major rail freight carriers on June 24, 1992 and failed to comply with the provisions of Rule 41(b) (System File SAC-9-92/UM-10-92).**
- (2) As a consequence of the violation referred to in Part (1) above, all Maintenance of Way employees who were denied the right to perform service on June 25, 1992, by the Carrier's actions, shall each be allowed one (1) day's pay at their respective straight rates.”**

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.

This case involves a claim by the Organization that the Carrier violated Rule 41 of the Agreement when it failed and refused to issue notice of a reduction in force five working days prior to the June 25, 1992 implementing of the force reduction. The facts are not in dispute. By notice dated June 24, 1992, the Carrier partially suspended its operations after it determined that there was an immediate adverse impact on the Carrier's operations from the closing of major interchanges as a result of a national labor dispute between the International Association of Machinists ("IAM") and major carriers with which the Carrier interchanges freight cars. On June 26, 1992, Congress passed a bill to abolish the strike and full service was restored.

The Carrier asserts that Rule 37(a) supports its actions. Rule 37(a) states:

"Rule 37 EMERGENCY FORCE REDUCTION RULE

- (a) Rules, agreements or practices, however established, that require advance notice before positions are temporarily abolished or forces are temporarily reduced are hereby modified so as not to require advance notice where a suspension of an individual carrier's operations in whole or in part is due to a labor dispute between such carrier and any of its employees."

According to the Carrier, its operations were partially suspended due to a labor dispute between itself and its employees represented by the IAM.

The Organization, on the other hand, asserts that the Carrier was not a party to the national rail dispute and, in fact, was not even engaged in national bargaining with the IAM. Thus, the Organization maintains that the Carrier did not have a dispute with any employees represented by the IAM, and had not even reached the point of self-help. Accordingly, the Organization argues, the suspension of the Carrier's operations was not due to a labor dispute between the Carrier and any of its employees, and a full five days advance notice of the force reduction was required.

After reviewing the record evidence, we have determined that the Organization's claim should be denied. Our review of the record demonstrates that this case involves the same issues and same Rule presented in Third Division Award 31683. In Award 31683, the Board rejected the Organization's argument that no dispute existed between the Carrier and any of its employees. The same decision under identical facts was reached by Second Division Awards 12787, 12788, and by Public Law Board No. 5426,

Award 4. Thus, this is the fifth dispute that has reached arbitration over the Carrier's June 25, 1992 force reduction. We find no basis in the record to deviate from the Board's prior Awards.

Accordingly, the claim 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 19th day of April, 2000.