

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

ILLINOIS CENTRAL RAILROAD COMPANY

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

STATEMENT OF CLAIM: 1. Are the 64 rules of the agreement between the Illinois Central Railroad Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees to be considered in their entirety when the agreement is applied to conditions affecting the rates of pay and working conditions of the group of employees covered thereby and the Carrier?

2. Do not the words in the first paragraph of Rule 34 of the controlling agreement ". . . by conditions beyond control of the carrier . . ." mean literally what they say?

3. Is the Carrier required to compensate employees when they render no work or service, due to the existence of conditions beyond control of the Carrier which preclude their reporting at their regular assigned work points?

CARRIER'S STATEMENT OF FACTS: The existing agreement between the parties, effective June 23, 1922, revised September 1, 1927, contain 64 rules. Rule 34 thereof reads:

"Rule 34. Reporting and Not Used. Employees required to report for work at regular starting time, and prevented from performing service by conditions beyond control of the carrier, will be paid for actual time held with a minimum of two (2) hours.

"If worked any portion of the day, under such conditions, up to a total of four (4) hours, a minimum of four (4) hours shall be allowed. If worked in excess of four (4) hours, a minimum of eight (8) hours shall apply.

"All time under this rule shall be at pro rata.

"This rule does not apply to employees who are engaged to take care of fluctuating or temporarily increased work which cannot be handled by the regular forces; nor shall it apply to regular employees who lay off of their own accord before completion of the day's Work."

During the evening March 6, 1945, the Carrier's property and buildings at Louisville, Kentucky, were inundated by the high waters of the Ohio River, the flood conditions prevailing through March 13, 1945, with water

everyone and complicate matters so that a clear decision on the claim itself may be avoided.

As stated in above Statement of Facts, the three questions raised by the Carrier are not representative of any dispute pending or unadjusted between the parties, therefore, there is no dispute pending before this Board as contemplated by Section 3 (i) of the Railway Labor Act and the Carrier's claim in respect to the three questions should be dismissed.

OPINION OF BOARD: The questions submitted by the Carrier arise out of the same fact situation and agreement as in Award 3661.

That a carrier may bring a proper dispute to any division of the National Railroad Adjustment Board for a decision has been determined by this Division in its Award 2436. However, in view of our holding in Award 3661, the questions here presented no longer constitute a dispute because they have been fully determined therein. For that reason the case should be dismissed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That there is no longer a dispute as contemplated by the Railway Labor Act.

AWARD

Case dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of October, 1947.

DISSENT TO AWARD 3662, DOCKET CL-3679

For the reasons set forth in dissent to Award 3661, Docket CL-3674, we dissent to this award.

/s/ C. P. Dugan
/s/ R. F. Ray
/s/ A. H. Jones
/s/ R. H. Allison
/s/ C. C. Cook