

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20628  
Docket Number CL-20609

William M. Edgett, Referee

(Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and Station  
( Employees  
PARTIES TO DISPUTE: (  
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-7473) that:

(1) Carrier violated the Agreement between the parties when it refused, and continues to refuse, to pay displacement allowances to certain employees (Claimants) in accordance with the Agreement between said parties, and

(2) Messrs. W. M. Thomas, L. T. Bailey, W. B. Blair, J. B. Carpenter, G. W. Boller, J. M. Bullinger and S. F. Pugh shall be allowed displacement allowances, effective 45 days subsequent to July 5, 1973, and continuing thereafter for the balance of their respective protective periods.

OPINION OF BOARD: Carrier's old main line and Georgetown sub-divisions were destroyed in June, 1972 by Hurricane "Agnes". The positions at Georgetown and Sykesville were abolished by Carrier under the provisions of Article VII (a) of the February 25, 1971 Agreement, which reads:

"Article VII reads in full as follows:

"(a) Rules, agreements or practices, however established, that require advance notice to employees before abolishing positions or making force reductions are hereby modified to eliminate any requirement for such notices under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire or labor dispute other than as covered by paragraph (b) below, provided that such conditions result in suspension of a carrier's operations in whole or part. It is understood and agreed that such force reductions will be confined solely to those work locations directly affected by any suspension of operations. It is further understood and agreed that notwithstanding the foregoing, any employee who is affected by an emergency force reduction and reports for work for his position without having been previously notified not to report, shall receive four

"hours' pay at the applicable rate for his position. If an employee works any portion of the day he will be paid in accordance with existing rules."

There is no dispute between the parties as to the application of Article VII (a) as it affects the notice given of the abolishment. The question here is when did the emergency end. The time it ended is of importance because the parties have entered into an agreement providing protection to employees whose positions are permanently abolished and have excepted positions abolished under Article VII (a) from its provisions; provided that such positions are restored within forty five days after the end of the emergency. The provision is Article I, Section 1(d) of the April 30, 1963 Agreement and reads:

"Permanent Abolishment of a Position

The term 'permanent abolishment of a position', as used herein, is defined as follows:

Section 1. The abolishment, elimination or discontinuance of any position of the telegrapher class, except:

\* \* \* \* \*

(d) The abolishment of positions in emergency under the provisions of Article VI of the August 21, 1954 Agreement, provided said positions are re-established at the termination of the emergency or within forty-five (45) days thereafter."

Hurricane "Agnes" did extensive damage in the entire Northeastern section of the country. Carrier's Georgetown agency station was destroyed by the flood on the Potomac River. Its Sykesville Agency Station was closed by the flooding of the Patapsco River. The extensive damage meant that operations at both locations were suspended until well after the time the flood receded. At Georgetown operations resumed on October 7, 1972. Operations at Sykesville did not resume until October 4, 1973.

As the record stands Carrier proceeded with all deliberate speed to repair the extensive damage and to resume operations as soon as practicable. The contest is not over whether this was done but centers, as noted, on when the emergency ended, within the meaning given that term by the parties' Agreement. In its usual meaning, and in the meaning given to it by cases decided by this Board, emergency connotes a sudden, unexpected happening which requires immediate action

(Awards 4354, 10839 and 11044). The parties agree that the flood conditions had ended by July 5, 1972. The Organization believes that the emergency, i.e., the need for immediate action, ended at that time. Carrier was, of course, still faced with the long task of repairing the damage and believes that the emergency did not end until it had done so.

Article I, Section 1(d) does not simply state that a position abolished under the emergency provisions is not considered a permanent abolishment. It qualifies that condition by stating that a position abolished under emergency conditions will be considered a permanent abolishment unless it is restored within forty five days of the date the emergency ends. The provision of forty five days along with the use of the word "emergency" without further definition indicates that the Organization is correct in measuring the forty five day period from July 5, 1972.

Everyone knows that when a flood occurs the damage may be so extensive that Carrier's operations will be disrupted for a considerable period of time. If, for example, the parties had intended to except job abolishments which were restored in a certain period of time following the resumption of operations they only had to say so. The use of some term to indicate that jobs restored after operations, or normal operations, were resumed would give much more force to Carrier's arguments here than the use of the word emergency. Emergency does indicate a sudden happening and the need for precipitous action passes in a short time frame. Then after the emergency passes a longer period of corrective action may be needed. In the usual understanding that period is not best described as an emergency. Added impetus to the belief that the parties intended to measure the time for job restoration from the shorter "emergency" period is found in the forty five day provision. That period, after the need for immediate action has passed, gives Carrier an opportunity to assess the situation and take appropriate action. That action, on this and other Carriers, has taken the form of recalling the employees to their positions and proceeding to abolish the positions under the non-emergency provisions of the Agreement.

Finding, as we do, that Carrier did not restore the positions within forty five days of the end of the emergency, within the meaning of that term in Article 1, Section 1(d), we find that the claim must be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employes 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 the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauloe  
Executive Secretary

Dated at Chicago, Illinois, this 7th day of March 1975.