CORRECTED

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Form 1

Award No. 29680
Docket No. SG-30139
93-3-91-3-590

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Montana Rail Link, Inc. (MRL)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Montana Rail Link, Inc.:

Claim on behalf of Assistant Signal Maintainers A.L. Athearn, S.A. Price, and R. R. Rennick.

A) Carrier violated the Current Quality of Life Agreement, particularly Article J, Section 1, Paragraph 4(Layoff and Recall) when it abolished their positions on Wednesday, December 5, 1990, at close of shift without a written five (5) working day advance notice.

B) Carrier should now be required to compensate Assistant Signal Maintainers A.L. Athearn and S.A. Price, 3-8 hours days pay each at straight time rate of $11.33 per hour for time lost on December 6, 7, 10, 1990. They were recalled for start of shift Wednesday, December 11, 1990. R.R. Rennick should be compensated for 5-8 hour days lost on December 6,7,10,11,12, 1990, at straight time rate of $11.33 per hour for time lost, as he was not recalled." G.C. File No. MRL-1-91. BRS Case No. 8558.MRL.

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

The Claimants were furloughed on December 6, 7 and 10, 1990, after the demolition of a bridge during a derailment caused a reduction in operations from twenty trains per day to one local train. The Organization contends that the Carrier violated Section 1, paragraphs (4) and (5) of Article J of the Agreement in that it furloughed Claimants without giving them the required five days notice. The Carrier contends that an emergency existed and that it was not required to give notice under the terms of paragraph (5).

Article J reads in pertinent part as follows:

> "4. Except as provided in Paragraph 5 hereof, before positions are abolished or discontinued, not less than five (5) working days advance written notice shall be given the employees affected, and a notice shall be posted on bulletin boards, and be made accessible to all employees affected....
>
> 5. The notice required in Paragraph 4 hereof is not required in emergency conditions, such as flood, snowstorm, hurricane, earthquake, fire, or strike, provided that the Company's operations are suspended in whole or in part and provided further that, because of such emergency, the work which would be performed by the incumbents of the position or the positions to be abolished or the work which would be performed by the employee involved in the force reductions no longer exists and cannot be performed. However, if notice is not provided prior to an employee leaving his residence for work, the employee shall be paid as if the employee had worked. When the emergency is over, forces shall be restored."

In resolving this dispute, we are guided by Third Division Award 24445, where the Board interpreted a similar Rule:

> "The Board has no difficulty in determining that the Court ordered embargo was an 'emergency'. The Organization argues, however, that it was not a 'flood, snowstorm, hurricane, tornado, earthquake, fire, or a

> labor dispute' and claims that because an embargo was not listed among these exceptions, it was not intended to be included. Such would indeed be the case, under well established principles of contract interpretation, but for the inclusion of the phrase 'such as' which makes the cited events common examples but not an all-inclusive list."

Additional clarification is found in Third Division Award 25574, where the Board stated:

> "Moreover, the work 'strike' in this context indicates that the emergency conditions contemplated by the Parties are not confined to natural disasters, but were intended to include circumstances which can arise on the property of or with the equipment of a consignee. The common denominator in these disparate contractual examples is an unanticipated, unforeseen event over which Carrier has no control; one which results in suspension of a Carrier's operations in whole or in part."

After reviewing the record in this case, we find there is sufficient evidence in the record to support the Carrier's position that an emergency condition existed on the property within the meaning of Paragraph (5). As to the two additional days claimed for Claimant Rennick, the Organization failed to rebut the Carrier's material assertion on the property that his temporary position had expired when forces were restored, and this statement thus stands as established fact.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever
Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 29th day of June 1993.