Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30954
Docket No. CL-31203
95-3-93-3-288

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications
(International Union
(
(Southrail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-10955) that:

1. Carrier violated the Agreement at Meridan, Gulfport, Morton, Vicksburg and Jackson, MS, Bossier City and Monroe, LA on June 25 or 26 or both, when it refused to permit TCU Agreement covered Clerical employes to perform service.

2. Carrier shall now compensate all TCU Clerical Agreement covered employes at Meridan, Gulfport, Morton, Vicksburg and Jackson, MS and Bossier City and Monroe, LA who were improperly prohibited from working on either June 25 or June 26, 1992, or both, in an amount equal to what such employes would have earned had they not been prohibited by Carrier from performing service.

3. Carrier shall also restore any benefits which would have accrued to Claimants had they not been prohibited from working on the above dates."

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 waived right of appearance at hearing thereon.

In this case, the entire on-property record of handling between the parties consists of two documents, namely, the single claim letter from the Organization and the single denial letter from the Carrier. There is evidence that an on-property conference was held to discuss the claim, but there is nothing to reflect or memorialize the contents, arguments, evidence or anything else which may have taken place at the on-property conference.

In the respective ex-parte Submissions to the Board, we find extensive argument and evidence from both sides which was not part of the on-property record. The parties know, or should know, that this appellate review Board is limited in its considerations to issues, evidence and arguments which were properly joined during the on-property handling of the dispute.

In this case, the initial claim letter from the Organization alleged that Carrier had improperly abolished certain clerical positions; that Carrier had restored the abolished positions in an untimely manner "at the end of the nationwide lockout;" that "no emergency as the term contemplated under the emergency rule existed;" that Carrier "did not comply with Rule 22(d) of the Agreement;" and that "Carrier's refusal to make TCU employees whole for losses during the lockout is in direct violation of HJ517 (Public Law 102-306)."

The single Carrier letter of rejection asserted that there had been no lockout of employees; that the Carrier was not covered by Public Law 102-306; that Carrier's "actions were governed by Rule 22(d);" that Carrier's operations had been curtailed because of "not being able to receive or deliver cars to various connecting carriers;" that the existing situation "was certainly an emergency . . . as evidenced by the action taken by Congress to end the labor dispute;" and that the abolished positions had been, in fact, properly and timely re-established after the emergency ended.

Before the Board, the Organization conceded that the parties to this dispute were not part of the national negotiations which gave rise to Presidential Emergency Board Nos. 219 thru 222. It also acknowledged that this Board was not being "asked to interpret Public Law 102-306." The Organization's basic argument before the Board centered on Rule 22(d) and Carrier's alleged failure to prove by "evidence that its operations were affected by the national lockout." In support of its argument on this point, the Organization cited with favor the decisions rendered in Third Division Awards 29016, 21262, 20059, 17051 and 15858.

For its part, Carrier presented a multifaceted argument to the Board beginning with its jurisdictional contention that this Board lacks authority to hear and decide this case. It chided the Organization for not earnestly arguing the Rules involvement and for "perfunctorily" citing the Agreement Rules here involved as well as its "half-hearted assertions relative to these Agreement Rules. Carrier then offered information to the Board relative to the numbers of employees involved in the temporary abolishment as well as to the fact that the affected employees had been given "the option of taking accrued personal leave or vacation time" and therefore suffered no real financial loss. Carrier also offered information to the Board relative to the numbers of trains normally operated on its property versus the number operated as a result of the strike situation which existed on the connecting carriers. This, it argued, supported its decision to invoke the emergency conditions exception allowed by Rule 22(d). In support of its position, Carrier cited with favor the decisions made in Second Division Awards 10713 and 7000 as well as Award 6 of Public Law Board No. 2452 along with Award 454 of Special Board of Adjustment No. 605.

From the Board's review of the record of this dispute, it is the Board's conclusion that there is no proper jurisdictional arguments involved in the case. While the Organization did, in fact, make reference to the federal law in its initial claim presentation, the Organization dropped that contention in its advancement of the dispute to the Board. While a jurisdictional challenge may be raised at any stage in the proceedings of a dispute, even before the Board (Third Division Awards 18577 and 16786), it is apparent that the STATEMENT OF CLAIM as presented to the Board in this case does not contain any reference to or contention about the provisions of the Public Law.

Under the Railway Labor Act, as well as the Rules of Procedure of this Board, the only question properly before the Board is that which is presented in the formal statement of claim when the dispute is listed with the Board for review. Therefore, Carrier's argument in this regard is rejected.

This case involves an application of Agreement Rule 22 with specific reference to paragraph (d) thereof. That Rule reads as follows:

"RULE 22
REDUCING FORCES

* * *

(d) Advance notice to employees shall not be required before abolishing positions under emergency conditions, such as flood, snow storm, hurricane, derailment or train wreck, tornado, earthquake, fire or labor dispute other than as covered by paragraph (f), provided such conditions affect company's operations in whole or in part. Such abolishments will be confined solely to those work locations directly affected by any suspension of operations. If an employee works any portion of the day he will be paid in accordance with existing rules. When the emergency ceases, all positions abolished must be re-established, with former occupants returned to their respective positions and said position need not be rebulletined. If the emergency conditions described herein terminate within seven days, employees will be entitled to return to their former positions at their next usual starting time not less than six hours after the emergency terminates; if the emergency conditions extend longer than seven days, employees will be entitled to return to their former positions at their usual starting time within forty-eight hours after the emergency terminates."

On this property, the Transportation Communications International Union also represents employees of the Carman's craft. The Carman's craft has an Agreement Rule which is in all applicable respects the same as Rule 22(d) quoted supra. A dispute involving the Carman's craft on this same "emergency" issue was recently examined by and ruled upon by the Second Division. Award 12750 reads, in relevant part, as follows:

"We find for the Carrier in this dispute. On the property, the Carrier stated that it was forced to curtail its operations because of the nation-wide strike and that it created an emergency within the meaning and intent of Rule 24. The Organization on the property did not contest or rebut the Carrier's position and, therefore, it stands as accepted fact. We, therefore, must deny the claim. The Carrier properly applied Rule 24."

For all of the reasons as set forth in Award 12750, as well as in the interest of protecting the principle of STARE DECISIS, the claim in this case is also denied. Additional support for this action is found in Awards 3 and 4 of Public Law Board No. 5427 each of which held as follows:

"The Organization has not established that the emergency force reductions Carrier imposed on June 25, 1992, as a result of a labor dispute it was engaged in with the International Association of Machinists was not accomplished other than as contemplated by Rule 19(d). The Organization has the burden of persuasion in this matter, and this burden has not been satisfied. Accordingly, the claim will be denied."

AWARD

Claim denied.

O R D E R

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 29th day of June 1995.