

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31107
Docket No. CL-31329
95-3-93-3-282

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10953) that:

1. Carrier violated the Agreement at Corinth, MS, Tupelo, MS, Louisville, MS, Artesia, MS, Tuscaloosa, AL and Jackson, MS (General Office) 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 Corinth, Tupelo, Louisville, Artesia, Jackson, MS and Tuscaloosa, AL 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.

On June 24, 1992, the International Association of Machinists (IAM) instituted a strike against a single carrier: the CSX Corporation. In response to the IAM-CSX strike, all other Carriers who had previously participated in national handling imposed an employee lock-out. SouthRail was not a party to the prior national negotiations. Ultimately, on June 26, 1992, all parties were required by Public Law 102-306 to resume the status quo as it existed prior to 12:01 A.M., June 24, 1992. The case before this Board does not concern interpretation of Public Law 102-306. Rather, the Organization maintains that SouthRail violated Rules 5 and 22 of the Agreement between the parties when it in abolished positions of Clerical employees on June 25, 1992. Rule 22 reads in pertinent part:

"...(d) Advance notice to employees shall not be required before abolishing positions under emergency conditions, such as flood, snow storm, hurricane, 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."

In its initial response to the Organization's claim, Carrier asserted that it had experienced an "accelerating decrease" in its business, as a result of the IAM strike and consequent lock-out by other carriers. When Carrier's assertion was contested by the Organization, however, Carrier did not support its assertion with any substantive evidence of actual decline in business on the dates in question. Once Carrier has asserted an affirmative defense it must be willing to furnish documentation to support that defense. In this instance Carrier has not done so. (See Third Division Awards 21262, 29016). Accordingly, the claim is sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.