

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31459  
Docket No. MW-31759  
96-3-94-3-37

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(Consolidated Rail Corporation (Conrail))

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed to timely and properly recall Messrs. C.T. Julian, R.E. Marvin, T.N. Foster, and R.D. McCormick to service following its decision to lockout its employees from service on June 24, 1992 (System Docket MW-2767).

(2) As a consequence of the violation referred to in Part (1) above, Messrs. C.T. Julian, R.E. Marvin, T.N. Foster and R.D. McCormick shall each be allowed eight (8) hours' pay at their respective straight time rates."

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.

Under the provision of Rule 6(b) the Carrier temporarily suspended operations on June 24, 1992 because of a national strike by the International Association of Machinists and Aerospace Workers. The strike ended in the early hours of June 26, 1992 and the Carrier resumed operations on that day.

Apparently all maintenance employees made it to work on June 26 except the Claimants in this case. The Organization is claiming a day's pay for June 26 because the Carrier did not call the

Claimants to tell them to return to work. However, it does not cite a Rule that requires such notification.

The Carrier argues that the Organization failed to prove a violation of the Agreement.

On June 24, 1992 the Carrier posted a notice to all its union represented employees. The pertinent portion of the notice reads as follows:

"NOTICE OF EMERGENCY FORCE REDUCTION

Operations are suspended because of a labor dispute with our employees represented by the International Association of Machinists and Aerospace Workers. Therefore, temporarily, all positions are suspended for the duration of such dispute."

When the dispute was ended in the early hours of June 26 the notice had no force and effect and the employees were free to return to work.

The Organization has the burden to prove that the Agreement requires the Carrier to individually call each employee to tell them the dispute is over. The Carrier in this case notified the various union representatives when operations were resuming. Strikes of the nature of the one in this case are subjects of both local and national news. Merely turning on the radio would have informed the Claimants that the strike was over.

A review of the record reveals the Organization failed to meet its burden. The record lacks any evidence that the Agreement was violated.

AWARD

Claim denied.

ORDER

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 25th day of April 1996.