

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31509
Docket No. TD-31754
96-3-94-3-12

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

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"(A) CSX Transportation Inc. ("Carrier" or "CSXT") violated its Train Dispatchers basic Schedule Agreement applicable in the Jacksonville Centralized Train Dispatching Center ("JCTDC") when it failed to notify the following train dispatchers on June 24, 1992 that their positions were temporarily suspended by the Carrier, CSXT, in violation of Article 7(b).

(B) Because of said violations, CSXT shall now allow those train dispatchers listed [in the original claim] four (4) hours pay at the rate applicable to their positions."

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.

This is a dispute involving the application of Article 7 - ABOLISHMENT NOTICES. On June 24, 1992, 31 Train Dispatchers arrived at work and were instructed to return home. Shortly after midnight that date a labor dispute between the Carrier and the International Association of Machinists (IAM) resulted in a suspension of operations. The Organization maintained on property

that the Carrier's failure to notify the Claimants not to report requires a four hour payment pursuant to Article 7(b). The Organization buttresses its position with an allegation that the Carrier notified over 200 employees. It supports its claim with numerous letters from employees who were notified and statements from the 31 Claimants asserting that unlike fellow employees, they were not notified prior to arriving for duty. The facts are that at the location in dispute there were no pickets during the shift changes involved herein.

The Carrier denies the applicability of Article 7(b) under these instant circumstances. It is the Carrier's position that since a work stoppage occurred on its property, Article 7(c) is controlling and requires no penalty payment for employees reporting without prior notification. The Carrier does not deny that it called over 200 employees, but asserts that only Article 7(c) is applicable as the IAM set up pickets throughout the Carrier's property which affected safe operations and necessitated the secession of operations. The Carrier asserts that all employees were aware of the impending dispute and received notification by media, telephone and posted notice.

The central issue at bar is whether Article 7(b) or Article 7(c) is applicable under these instant circumstances. This Board must ignore all issues raised in the parties' Submissions which were not properly disputed on property, including the history of this provision. Article 7 requires a five day notice for a force reduction to be given to Train Dispatchers except under the following conditions:

"(b) Emergency Conditions

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, snowstorm, hurricane, tornado, earthquake, fire, or labor dispute other than as covered by Article 7(c), provided that such conditions result in suspension of a Carrier's operations in whole or in 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 to work for his position without having been previously notified not to report, shall receive four (4)

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.

(c) Labor Disputes

Rules, agreements, or practices, however established, that require advance notice before positions are abolished or forces are reduced are hereby modified so as not to require advance notice where a suspension of a Carrier's operations in whole or in part is due to a labor dispute between said Carrier and any of its employees."

The Organization argues that Article 7(a) required a five day advance notification and Article 7(c) modifies the advance notice requirements of 7(a). Article 7(c) does not supersede the four hour payment of Article 7(b) when employees are not properly notified. The Organization maintains that the only proper form of notification is by telephone from the Carrier and not posted notices or television and radio reports.

The Carrier argues that Article 7(b) is only applicable to emergency conditions other than those contemplated by Article 7(c). As this dispute was clearly a labor dispute covered by Article 7(c) the provisions of Article 7(b) are inapplicable.

This Board studied the full record and the language of Article 7. It is important that Article 7(a) has two explicit exceptions to the notice requirements. The language states that Article 7(b) and Article 7(c) are fundamentally different provisions constituting exceptions to notice i.e., Emergency Conditions and Labor Disputes. This Board finds that the language of those Articles is not fundamentally different, except to remove labor disputes from the applicability of the penalty payment from Article 7(b). In all other respects, Article 7(c) is unnecessary and encompassed by Article 7(b). Clearly a Labor Dispute involved the Carrier and "any of its employees" and a suspension of operations resulted. Accordingly, pursuant to Article 7(c) the claim must fail. Article 7(b) applies except "other than as covered by Article 7(c)." There is no provision in Article 7(c) that requires notification, or payment for reporting without prior notification. Carrier's attempt to notify its employees is of course proper, but its failure to reach all of its employees carries no consequence as it violates no Agreement provision. Article 7(c) is the applicable provision which supersedes Article 7(b) and by language of the Agreement negotiated by the parties requires no advance notice or penalty.

The Board must follow the language as written and deny the claim.

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 23rd day of May 1996.