Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35088
Docket No. SG-31726
00-3-93-3-773

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

"Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Indiana Harbor Belt Railroad (IHB):

Claim on behalf of all signal employees adversely affected by Carrier's force reduction from June 24 to June 26, 1992, account Carrier violated the current Signalmen's Agreement, particularly rule 2-E-1, when it abolished the Claimants' positions and deprived them of the opportunity to perform work during that time period." Carrier's File No. S-92-004. General Chairman's File No. 92-19-IHB. BRS File Case No. 9271-IHB."

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 were given due notice of hearing thereon.

This case involves a claim by the Organization that the Carrier violated of the Agreement when it failed and refused to issue notice of a reduction in force five

working days prior to its implementation of the June 24 to June 26, 1992 force reduction. The facts are not in dispute. By notice dated June 22, 1992, the Carrier announced that it might partially suspended its operations in the event any of several labor organizations in negotiations with major Carriers engaged in a work stoppage on June 24, 1992. In fact, on June 24, 1992, the International Association of Machinists and Aerospace Workers ("IAM") did commence a strike against CSXT. In response, various Carriers in National contract negotiations locked out their employees and completely shut down their operations.

According to the Carrier, the strike and lockout resulted in a 79 percent reduction in the Carrier's traffic. It responded by temporarily reducing its forces in various crafts. On Friday, June 26, 1992, after the President of the United States signed Public Law 102-306 terminating the work stoppage, the Carrier reestablished its abolished positions as railroad operations of Carriers involved in the labor dispute returned to normal.

According to the Organization, the Carrier's actions violated Rule 2-E-1, which reads in pertinent part:

> "(a) Notice of a force reduction or an abolishment of positions shall be given to the employees occupying the positions as soon as possible and not less than five (5) working days in advance. Notice of such force reduction or abolishment of positions shall be posted in the involved seniority district. However, no advance notice to employees shall be required before temporarily abolishing positions or making temporary force reductions under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire or labor dispute other than as covered by paragraph (b) below, provided that such conditions result in suspension of the Company operations in whole or in part. It is understood and agreed that such temporary force reductions will be confined solely to those work locations directly affected by any suspension of operations.
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> (b) No advance notice shall be required before positions are temporarily abolished or forces are temporarily reduced where a suspension of the

Company operations in whole or in part is due to a labor dispute between the Company and any of its employees."

The Organization asserts that notice is waived under subsection (b) only when a labor dispute is between the Carrier and its employees. Here, the Organization points out, the Carrier was not a party to the national rail dispute. So, too, the Organization asserts that subsection (a) does not apply, because the Carrier failed to show that its reduction of the Claimants' positions was directly related to the reduced operation of trains by other Carriers.

In fact, according to the Organization, the suspension of other Carriers' traffic provided a golden opportunity for the Carrier's employees to perform signal work. The Organization asserts that the work of signal employees was not adversely affected by the strike/lockout situation, and the layoff of signal employees therefore was not justified. It argues that the Carrier improperly denied them the opportunity to work from June 24 to 26, 1992, and asserts that the Carrier should make the Claimants whole for their lost wages in connection with the job abolishment.

The Carrier, however, asserts that the conditions of subsection (b) were satisfied. It claims that the positions that were temporarily abolished were confined solely to work locations directly affected by suspensions of operations caused by the work stoppages. It argues that the five day notice was waived by the Organization under subsection (a) insofar as the emergency force reductions were directly attributable to the IAM strike against CSXT and the resulting shutdown of operations by most of the Carrier's major connections. The Carrier points out that under subsection (a), in contrast to subsection (b), the labor dispute causing the suspension of the Carrier's operations need not involve the Carrier and its employees.

After reviewing the record evidence, we have determined that the Organization's claim should be denied. The Carrier persuasively argues that the shutdown of CSXT operations had a drastic effect on its ability to operate its railroad. We believe that these conditions were of an emergent nature, and therefore permitted a force reduction without five days notice under Rule 2-E-1.

Further, our review of the record demonstrates that this case involves the same issues presented in Third Division Award 20059 and Second Division Awards 6560, 13006 and 13007. The latter two Awards involve the same Carrier. We find no basis

in the record to deviate from these prior Awards. Accordingly, the claim must be denied.

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 15th day of November, 2000.