

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36724
Docket No. MW-35894
03-3-99-3-905**

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(New Orleans Public Belt Railroad

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to allow Messrs. R. Baker, M. Sims, H. Sims, J. Spot, III, E. F. Meisner, III, G. L. Vogel, L. G. Williams, Jr., A. Thomas, Jr., F. E. Savone, J. E. Reed, L. Johnson, D. Sims, D. Boggess, R. Womack, III, L. Lee, J. O. Ezidore, O. R. Kelly, K. Lindsey, G. S. Deshotel, C. Taylor, R. P. Jemison, E. J. Stoulig, H. J. Bergeron, S. J. Bourgeois, K. J. Czernia, D. R. Schielder, R. E. Douglas, S. R. DiMarco, A. Mixon, Jr., C. Wilkerson, J. Miles, P. H. Schielder, R. Parnell, Sr., R. P. Campagne, C. B. Washington, A. Thornton, R. R. McKnight and J. J. Bertucci, Jr. to perform their assigned duties on September 29, 1998 (System File MW-99-1-NOPB).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. Baker, M. Sims, H. Sims, J. Spot, III, E. F. Meisner, III, G. L. Vogel, L. G. Williams, Jr., A. Thomas, Jr., F. E. Savone, J. E. Reed, L. Johnson, D. Sims, D. Boggess, R. Womack, III, L. Lee, J. O. Ezidore, O. R. Kelly, K. Lindsey, G. S. Deshotel, C. Taylor, R. P. Jemison, E. J. Stoulig, H. J. Bergeron, S. J. Bourgeois, K. J. Czernia, D. R. Schielder, R. E. Douglas, S. R. DiMarco, A. Mixon, Jr., C. Wilkerson, J. Miles, P. H. Schielder, R. Parnell, Sr., R. P. Campagne, C. B. Washington, A. Thornton, R. R. McKnight and J. J. Bertucci,**

Jr. shall now each be compensated for eight (8) hours' pay at their respective straight time rates of pay."

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.

The Claimants established and held seniority in various classes within the Carrier's Roadway, Track, Welding, and Bridge and Building Departments of the Maintenance of Way and Structures Department. On the claim date, the Claimants held regular assignments with regular workdays of Monday through Friday and rest days of Saturday and Sunday. The Claimants' work locations were Eastern New Orleans, Metairie, and Avondale, Louisiana.

The parties do not dispute that on Friday, September 25, 1998, the Claimants were notified that they should not return to work until further notice by either their respective supervisors or the Carrier's telephone voice message system. The Carrier's issuance of the September 25 notice was in response to a National Weather Service advisory predicting that New Orleans was in the direct path of Hurricane Georges, and that the city might be affected by severe flooding, widespread power outages, and extensive wind damage. As a precaution, during the afternoon of Saturday, September 26, 1998, the Mayor of New Orleans issued evacuation warnings in anticipation

of the hurricane (the Mayor is also the President of the Public Belt Commission, an oversight entity of the municipally-owned Carrier).

Although the hurricane posed a severe threat to New Orleans, fortunately, the ensuing damage was not as serious as predicted. According to the Carrier, "While the hurricane missed New Orleans, the storm did cause wind damage, flooding, and downed electrical lines." The Organization also acknowledged that, "some flooding and wind damage was incurred on Sunday, September 27 and Monday, September 28 as a result of the storm." It appears from the record that none of the Carrier's Agreement-represented employees worked on Monday, September 28, 1998 and that no claims were filed for that date.

The record indicates that on Monday, September 28, 1998, at 7:00 P.M., the Mayor issued a statement urging citizens to return home and notifying them that the imposed curfew would remain in effect until 6:00 A.M. the next morning. Local businesses were encouraged to remain closed on September 29, 1998, and community residents were informed of the location of available shelters, interstate and bridge closings and procedures for handling medical emergencies. According to the Mayor's statement, on September 29, 1998, public schools would be closed, RTA bus service would be suspended, the airport would remain closed (except for use as a shelter) and government offices would be closed, with only essential personnel reporting to work.

The instant dispute centers on the fact that the Carrier's train and engine service employees were instructed to return to work on September 29, 1998 to reduce a six-day backlog of rail cars (which the Carrier asserts was not normal) while the Claimants allegedly were improperly withheld from service. The Carrier points out, and the Organization seems to acknowledge, that six of the above Claimants were identified as "essential personnel" and, as a result, were instructed to report to work on September 29, 1998. The Carrier states that the six MofW employees inspected track and removed debris from the tracks. Accordingly, the Board finds that the above claims for Claimants M. Sims, A. Thomas, Jr., H. Sims, O. R. Kelly, E. F. Meisner and D. Sims are dismissed inasmuch as they worked and were paid for the

service they performed on the claim date. The remaining Claimants returned to work on Wednesday, September 30, 1998.

The Organization maintains that the Carrier improperly withheld the Claimants from service on September 29, 1998, because no emergency conditions existed that prevented the Claimants from performing their regularly assigned duties. The Organization contends that the Claimants were forcibly withheld from service in violation of Rules 1, 5, 18, and 19 while there was work for them to be performed, and that the Carrier unilaterally and improperly denied them their contractual right to a 40-hour workweek.

Furthermore, the Organization avers that on September 29, 1998, the Carrier allowed train crews to work the entire day, "handling an influx of railcars," and as a result, the Carrier cannot credibly argue that the Carrier's operations were suspended in whole or in part because of any weather-related emergency. Therefore, the Organization contends that the Carrier's reliance on the emergency conditions set forth in Rule 5(e) is misplaced. Finally, the Organization states that the Carrier had no right to withhold the Claimants from service based on the Mayor's recommendation, and that the Carrier offered nothing to substantiate its position that, "its operations were suspended in whole or in part by the physical conditions of flood, snow, storm, hurricane, tornado, earthquake, fire or a labor dispute." (Emphasis added)

The Carrier contends that on September 29, 1998, only essential personnel were called to return to work. According to the Carrier, "some train service employees" were called in to "handle an influx of railcars" and six MofW employees were instructed to return to work in order to "inspect track and remove debris that accumulated on track during flooding." The Carrier asserts that the MofW employees were "needed to get the clean up started where the NOPB could assess the damage and start the process of returning to normal operations after the Mayor authorized the opening of businesses." In the Carrier's view Rule 5(e) allowed the Carrier to suspend certain assignments on the claim date because emergency conditions resulting from the inclement weather still existed.

The central issue is whether the Carrier improperly withheld the Claimants from their assignments on the claim date, in violation of Rule 5(e) and if so, whether any basis exists for the compensation claimed. Paragraphs (b) and (c) of Rule 5, Force Reduction, require that employees receive advance notice before positions are abolished or force reductions made. Exceptions to the advance notice requirements are found in paragraphs (c) and (e), as follows:

- “(c) . . . Rules, agreements or practices, however established, that require more than sixteen (16) hours advance notice before abolishing positions or making force reductions are hereby modified so as not to require more than sixteen (16) hours such advance notice under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike, provided the Carrier’s operations are suspended in whole or in part and provided further that because of such emergency the work which would be performed by the incumbents of the position to be abolished or the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed.

- (e) . . . rules, agreements or practices...that require advance notice to employees before temporarily abolishing positions or making temporary force reductions are hereby modified to eliminate any requirement for such notice under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire...provided such conditions result in suspension of a carrier’s operations in whole or in part...any employee who is affected by such an emergency force reduction or reports for 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 position of the day he will be paid in accordance with existing rules.”

The record indicates that in his response to the Organization’s initial claim, the Carrier’s Manager, Engineering & Maintenance stated:

“ . . . Certain limited train crews (‘essential personnel’) were called out on Tuesday, September 29, to handle an influx of railcars received. Also six (6) of the total 38 Maintenance of Way employees you identified in said claim were called out on Tuesday, September 29 to inspect track and remove debris that accumulated on track during flooding. Those six (6), (‘essential personnel’) were M. Sims, A. Thomas, H. Sims, O. Kelly, E. Meisner, and D. Sims. The remainder of Carrier’s employees, including all the Maintenance of Way personnel, returned to service the following day. . . .”

In its subsequent appeal to the Carrier, the Organization stated, “there were no emergency conditions in the afternoon or evening of September 28, 1998, and there were no emergency conditions in the morning, afternoon, and evening of September 29, 1998.” The Board finds that the record contains no evidence that contradicts the Carrier’s position that the flooding caused by the hurricane adversely impacted the Carrier’s operations and that emergency conditions existed on September 29, 1998. The Organization is the moving party in this dispute, and shoulders the burden of proving its claim through the submission of credible evidence. The Carrier’s response stated that:

“There was damage to be dealt with and flooding to contend with on the date in question. . . . Those employees that were worked were ‘essential personnel’ (some of which were your members) that were needed to get the clean up started where the NOPB could assess the damage and start the process of returning to normal operations after the Mayor authorized the opening of businesses.”

The Board finds that the Carrier’s decision to operate with a reduced work force on the claim date, when flooding conditions existed as a result of the hurricane, was not contrary to paragraphs (c) and (e) of Rule 5. Both paragraphs include “flood” and “hurricane” as situations constituting weather emergencies. Although the Mayor’s September 28, 1998 directive might have influenced the Carrier in its decision to partially suspend operations on the claim date, paragraphs (c) and (e) of Rule 5 provide ample

support for that decision. The Organization did not carry its burden of proving that the Carrier improperly made a weather-related force reduction on September 29, 1998, or that it unduly deprived the Claimants of compensation under any cited provision of the Agreement. Previous Boards have afforded the Carrier latitude when implementing emergency procedures as a result of weather conditions. Prior Awards consistent with the instant findings include Second Division Awards 11757, 13040 and 13137, as well as Third Division Awards 32798 and 33625.

Accordingly, the claim is 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 17th day of September 2003.