Award No. 247
Case No. CL-18-SE

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express & Station Employes
and
Alabama, Tennessee and Northern Railroad Company

QUESTIONS AT ISSUE:

(1) Did the Carrier violate the provisions of the February 7, 1965 Agreement, particularly Article I, Section 4, thereof, when on August 18, 1969 Claimants were not given sixteen hours advance notice that their positions would not be worked due to the storm known as "Hurricane Camille."

(2) Shall the Carrier be required to pay the following named employes one day's pay at straight time at the rate of their respective positions as indicated below:

Claimant	Position	Rate of Pay
C. H. Reaves	Rate-Bill Clerk	$28.7001
L. F. Knight	Report-Clerk	26.9096
F. E. Hodges	Yard-Bill Clerk	26.5068
D. C. Knapp	Assistant Cashier	27.1086
B. A. Platt	Steno-Clerk	26.1907
H. M. McGinnis	Chief Clerk-Cashier	30.7013
A. W. Moseley	Rate-Bill Clerk	28.7001

OPINION OF BOARD: Several days prior to August 18, 1969, alert warnings were received of the impending arrival of Hurricane Camille. Necessary precautions were taken by the Carrier to evacuate cars and equipment from its Mobile Yard to higher ground. After the hurricane had passed through the area, the Claimants allege they reported for duty on August 18. On that day, the first and second yard-crews did not perform service, although the third trick was utilized to return cars to the Mobile Yard. The instant dispute seeks compensation for August 18, despite the fact that Claimants failed to perform any service.

The substance of the instant claim, as argued by the Organization, is based on the failure of the Carrier to give the sixteen hours advance notice as required by Article I, Section 4, of the February 7, 1965 Agreement. In reality, there are two questions before us. The first involves Section 4 of Article I, and the second presents a question of fact which will be discussed subsequently.

The pertinent portion of Article I, Section 4, of the February 7, 1965 Agreement, is hereinafter quoted:

> "Notwithstanding other provisions of this Agreement, a carrier shall have the right to make force reductions under emergency conditions such as flood, snowstorm, hurricane, earthquake, fire or strike, provided

> that operations are suspended in whole or in part and provided further that because of such emergencies the work which would be performed by the incumbents of the positions 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. Sixteen hours advance notice will be given to the employees affected before such reductions are made."

Initially, we will concern ourselves with the apparent thrust of the Organization to the effect that Carrier failed to give the required sixteen hours advance notice. Without doubt, the Carrier is granted an unqualified right to make force reductions under the emergency conditions specifically spelled out in Section 4, and the provisos thereto. Thus, the first query is whether a Carrier is compelled to avail itself of the grant of this power. Stated differently, is it mandatory or optional for a Carrier to make force reductions upon the happening of an event specifically defined in said Section 4? Can a Carrier refrain from making force reductions under such conditions when work remains to be performed?

In our opinion, it is the Carrier's decision which is the determining factor. It is the Carrier which was granted that option. However, we would caution a Carrier to exercise such option carefully. Hence, we are required to recognize that Section 4 of Article I, provides an escape hatch for a Carrier faced with the specified conditions contained therein--to avail itself of the opportunity to extricate itself from paying employees for non-performance of work where the work no longer exists or cannot be performed.

The second aspect of the instant dispute is concerned with a factual question as to whether or not the Claimants reported for duty on August 18, 1969. The Organization alleges as follows:

> "On August 18, 1969, the claim date, after the hurricane had passed through the area, the claimants reported for duty and found the AT&N property in a flooded condition and no supervisors to instruct them as to what service should or should not be performed and there was no telephone service available as it was out of order and all trains moving into and out of the yard had been suspended - - -"
>
> "- - - claimants did report for duty but were prevented from performing service because it was readily apparent that the Carrier's operations had been shut down and there was no work for the claimants to perform on this date."

The Carrier, on the other hand, refutes the Organization's allegation that Claimants reported for duty, as follows:

"However, none of the claimants in this dispute reported for work on Monday, August 18, 1969."

"Because of the storm and water conditions which existed, and probably because they were unable to physically reach their point of employment, none of the claimants reported for work on August 18, 1969."

"The fact that none of the claimants reported for duty on August 18, 1969, invoked the clear provisions of Article IV, Section 5 of the Agreement reading: 'A protected employee shall not be entitled to the benefits of this Article during any period in which he fails to work due to disability, discipline, leave of absence, military service, or other absence from the Carrier's service***.' (Emphasis ours) The failure of the employes to report was certainly not attributable to the Carrier, - - -."

"The Carrier denies that any of the seven claimants reported for duty. In fact, the Organization admits such in the first paragraph on Page 3 when it states that it was virtually impossible to get to the yard office at Mobile where these claimants were to report for service."

"In summary, the Carrier states that on August 18, 1969, each of the claimants failed to report for service; that had they reported, they would have been used on their jobs and compensated accordingly."

In this posture, each party seeks a sustaining award on the basis of controverted facts. Neither party has adduced any independent verifiable proof to support its allegations. Each party, furthermore, asserts that the other side has the burden of proof to support its position. On the basis of the record before us, we find it impossible to determine which party is stating the truth. Therefore, on the facts before us, we are compelled to leave the parties in the position we find them. We will not be placed in a position of labelling one side or the other, as having concocted statements to fit its version.

In passing, we would briefly comment on one of the Carrier's defenses, namely, that the Organization submitted a claim to the Third Division, predicated on a violation of the effective Schedule Agreement, arising from the identical facts involved herein. Hence, the Carrier argues that our Board lacks jurisdiction of the instant dispute. Without enlarging upon what we have previously stated, we would simply note that our Award No. 176, fully disposed of such contention.

AWARD

The answer to question (1) is in the negative.

Question (2) per Opinion.

Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
June 9, 1971