PUBLIC LAW BOARD NO. 2366

AWARD NO. 47

DOCKET NO. 61

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Illinois Central Gulf Railroad Company

STATEMENT OF CLAIM

'"(1) The Carrier violated the Agreement when it reduced below forty (40) hours, and without the required five (5) working day advance written notice, the work week of the seventy-seven (77) employees listed in Employees' Exhibit "A-1". (Organization's File: System; Carrier's File 1504)

(2) The Claimants shall each be allowed eight (8) hours pay at their respective rates for January 15, 18, 19 and 20, 1982."'

OPINION OF BOARD

There is very little dispute as to the facts which gave rise to the claim before us.

The Claimants were all regularly assigned employees who were furloughed without being given five (5) working days advanced written notice as required by rule 30(b) of the Agreement. The Organization asserts that rule 19(a) is also pertinent because it guarantees employees forty (40) hours of work each week.

The Carrier asserts that severe weather including snow, ice, freezing rain, etc. caused the lay-offs and a five (5) working day written notice was not necessary because of the exceptions set forth in rule 30(d) which states that no advance notice is required before a temporary force reduction under "emergency conditions" such as snow storms among other causes as long as that emergency condition results in a suspension of operations in whole or in part. Further it is understood that the temporary work reduction will be confined solely to the work locations directly affected by any suspension of operations.

The Organization states that the snow storm did not constitute an emergency and there was not a suspension of the operation of trains.

The Carrier asserts that it presented evidence while the case was under review on the property to show that there was a significant cold weather problem in the area which was not reasonably predictable and that that certainly constituted an emergency within the language of rule 30(d). Moreover the Carrier argues that the suspension of operations in whole or in part does not refer to train operations but to the particular maintenance of way operations which otherwise would have been performed.

There is, of course, some basic appeal in the contentions of both parties. Normally when one considers the "operation" of a rail carrier one thinks in terms of the movement of trains however the Carrier's position is not totally inconsistent with the reading of rule 30(d) especially when one reads the portion of the rule which says that temporary force reductions will be confined solely to those work locations directly affected by any suspension of operations.

The Organization has the burden of proof in the particular case. The Board has considered the matter as handled on the property and we find that the Organization has not presented evidence of the parties intent when they use the words "suspension of operations". We will dismiss the claim for failure of proof however it should be understood that this dismissal may not be precedential if in a future case the Organization demonstrates factually that the parties to the negotiation intended that the words of rule 30(d) be restricted to instances where train operations were suspended in whole or part.

FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

Claim dismissed for failure of proof.

Joseph A. Sickles
Chairman and Neutral Member

J. S. Gibbins
Carrier Member

Hugh G. Harper
Organization Member

10/12/83
DATE

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