

PUBLIC LAW BOARD NO. 2556

Award No. 8

Case No. 8

Docket No. MW-147

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Southern Railway Company

Statement

of Claim: Claim on behalf of M. L. Helmer, et al, for 5 working days pay alleging not being given 5 working days' notice before being laid off.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 17, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

The instant claim, from Timbering and Surfacing Gang No. 9, working in the vicinity of Collierville, Tennessee, arose as a result of Carrier's decision to discontinue all timbering and surfacing activity among the northern most gangs working in Tennessee. Consequently, T&S Gang No. 1 at Dayton, Tennessee; Gang No. 8 at Morristown, Tennessee; Gang No. 15 at Knoxville, Tennessee; and Claimant Gang No. 9, at Collierville, Tennessee, were abolished temporarily.

The Employees contend that such represented a violation of Rule 36 - "Force Reduction and Displacement Rights" - reading:

"(a) When forces are reduced or positions of employees abolished, not less than five (5) working days advance notice shall be given."

The record reflects that in late December, and throughout the entire month of January, the weather had been unusually cold. It had, for instance, dropped 19 degrees F. causing extreme freezing conditions on the road bed. The freezing conditions continued through the latter part of January, with the temperature ranging between 9° and 18° below normal from the 25th through the 31st.

Said subfreezing conditions caused the drastic curtailment in production for all T&S gangs in Tennessee, which, in some cases, had caused the level of output to drop by 70-75%.

All T&S gangs in Tennessee, on January 27, 1978, had been and were experiencing difficulties in starting their equipment, frozen fuel lines, brakes, excessive damage to tamper heads, plows and other appurtenances due to frozen road beds. The ballast sections were pushed out when shoving ties and grade crossings were unable to be worked on.

In view of such emergency conditions a decision was reached by Carrier's Maintenance of Way management to discontinue all timbering and surfacing activity under the effected gangs until weather conditions abated. Therefore, the gangs were abolished. Of the four T&S Gangs abolished only Claimant's Gang No. 9, filed a claim.

Rule 37 -Emergency Force Reduction - reads:

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

(b) Except as provided in paragraph (a) hereof, rules, agreements or practices, however established, 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, or a labor dispute other than as defined in paragraph (a) hereof, provided that such conditions result in suspension of Carrier's 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 effected by any suspension of operations....."

The term "emergency conditions" referred to in Rule 37(b) above have not been interpreted to be limited only to those itemized. See for instance, Third Division Award No. 15607 (Lynch) which held:

"This type of rule does not mean that 'emergency conditions' are limited to the six emergencies mentioned."

The Employees, on this record, have not undertaken to demonstrate by probative evidence that they have proven their claim. They are, as the moving party, obligated to assume the burden of producing substantial evidence to sustain every essential element of that claim. They have failed to do so.


There were emergency conditions existing affecting both man and machine. We find that Carrier's decision to temporarily break off Claimant Gang's work because of abnormal weather conditions was a reflection of the difficulties suffered by both machine and the employees. It was just that envisioned and provided for by the negotiations of Rule 37. It is a fact that later in the spring the Gang had to return to this location in order to retamp and redress the track over an area covering about seven miles because of same having been poorly surfaced because of the conditions previously described.


The T&S Gangs were experiencing lost time due to difficulties of starting equipment. The continuing experience of damage to plows and tampers, the pushing out of frozen ballast sections when shoving cross ties under the rail were creating intolerable working conditions. Additionally, the employees were experiencing extreme discomfort because of the cold. It is not difficult to envision that they were reasonably pleased to break off temporarily under those abnormal work conditions. That this be fact is borne out by the knowledge that the only claim presented by any of the four T&S Gangs is the instant case.

The Board finds the instant claim to be without merit and it will be denied.

Award: Claim denied.


A. D. Arnett, Employee Member


R. S. Spenski, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member