

PUBLIC LAW BOARD NO. 3445

Award No. 12
Case No. 12

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

And

Southern Railway Company

STATEMENT OF CLAIM:

Gary E. Ledford and the T and S Gang No. 4, have filed claim for each to be paid at their respective rates for the week of September 20-24, 1982, account of reporting and wanting to work, but not allowed to work by Carrier. Employees request pay for such.

FINDINGS:

Claimants, members of T and S Gang No. 4, were temporarily suspended from service due to their positions being temporarily abolished. The temporary abolishment of Claimants' positions were the result of a nationwide strike instituted by the Brotherhood of Locomotive Engineers. The Carrier temporarily abolished the positions after determining that adequate supervision for the Gang was unavailable.

As a result of Carrier's action, Claimants filed Claim for payment for the work of September 20-24, 1982, as a result of being denied work by Carrier.

The issue to be decided in this dispute is whether Claimants were entitled to be used in service on the dates in question and should therefore be compensated.

The position of the Carrier is that Claimants were not entitled under the Agreement to be used in service. The Carrier contends that as a result of the aforementioned strike, it was necessary to temporarily abolish the positions in question because adequate supervision was unavailable.

The Carrier further contends that it was fully within its right to abolish the position during the dates in question. In support of its position, the Carrier cites Rule 37(a), stating "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 Carrier's operations in whole or in part is due to a labor dispute between such Carrier and any of its employees". The Carrier maintains that this rule clearly allows it to temporarily abolish a position when its operations are disrupted by a strike. The Carrier asserts that the Organization has never cited a specific rule violation, but rather maintained that it was unfair for Carrier not to use Claimants since they were available for duty. The Carrier contends that this does not constitute a legitimate basis for the Claim.

Finally, the Carrier maintains that it did not violate the Agreement by delivering an untimely denial to the Organization. The Carrier contends that it met the 60 day time limit by

mailing the denial on February 14, 1983. The Carrier further maintains that Rule 42(a), requiring an answer within 60 days, only requires that the letter be mailed within 60 days, not received. The Carrier cites awards holding that the mailing date is conclusive. The Carrier finally maintains that although the postmark on the letter was February 17, 1983, the letter was mailed on the 14th and cites statements from the employees responsible for mailing the letter to substantiate its position.

The position of the Organization is that the Carrier violated the Agreement by refusing to allow Claimants the opportunity to work on the dates in question. The Organization contends that the Carrier used other T and S Gangs during the dates in question, and that therefore T and S Gang No. 4 should have been used. The Organization maintains that the members of T and S Gang No. 4 had been furloughed for a large part of the year and that this is further evidence of Carrier's unfair and arbitrary treatment of the Claimants. The Organization asserts that the Carrier had no basis for working other Gangs and not using Claimants' Gang, and that therefore the Carrier should be required to compensate the Claimants for the period they were denied employment.

After review of the applicable contract provisions, the Board finds that the Organization's Claim must be denied.

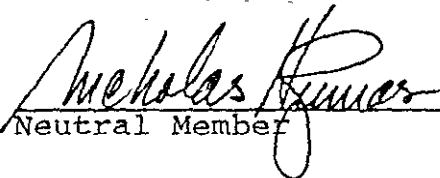
Carrier did not violate the timeliness requirement of Rule 42(a). Rule 42(a) requires a decision from the Carrier within 60 days. Rule 42(a) requires the Carrier to "notify in writing" within 60 days. This language contemplates that the decision must

be mailed within 60 days. Although the postmark indicated that the letter was not mailed until February 17, 1983, the Carrier's employees stated that they mailed the letter on February 14, 1983. While we would normally hold the postmark to be dispositive of the mailing date, in the present case we find there is evidence that the letter was mailed on February 14, 1983.

Regarding the substantive issue in this Claim, we find that the Agreement does not support the Organization's position, Rule 37(a) is clear in its language; it clearly indicates that the Carrier need not give "advance notice" of a temporary abolishment when its operations are suspended due to a labor dispute. In this case, Carrier's operations were affected by a strike, and the Carrier was within its rights under Rule 37(a) to temporarily abolish Claimants' positions. The fairness or unfairness of Carrier's action is irrelevant to the Claim. The Agreement is controlling, and clearly allows Carrier to take the action grieved in this Claim.

AWARD:

Claim denied.


Neutral Member


Carrier Member


Organization Member

Date: 11/13/85