Award No. 4506
Docket No. 4296
2-IC-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Illinois Central Railroad Company on May 9, 1961 violated the terms of the agreement when it denied its car shops employes at Centralia, Illinois, their seniority rights to perform service and failed to give them proper notice required by the agreement.

2. That the following employes at Centralia Car Department be paid eight (8) hours pay:

H. D. Draege	C. P. Phillips	J. D. Gore
J. G. Bonner	Jerry L. Piercy	R. D. Norwood
D. E. Coleman	D. B. Davis	W. J. Gaetti
J. E. Jackson	C. B. Simpson	L. R. Griner
R. A. Babb	C. J. Marshall	B. L. Leek
J. Sanders	T. T. Beasley	R. Krikorian
T. E. Tate	L. F. Piercy	H. D. Patterson
K. E. Newman	L. T. Bonner	D. D. Jackson
R. E. Foutch	M. L. Fields	R. A. Swartzlander
F. R. Nollman	G. V. Backs	G. E. Allen
A. Ballantini	V. D. Simmons	S. E. Owens
N. J. Prosise	H. E. Leek	Elmer Ballantini
H. H. Simmons	B. D. Holsapple	L. R. Niederhofer
H. E. Sanders	R. E. Featherling	E. J. Bright
V. L. Tate	D. L. Kramer	C. M. Lambert
B. D. Harris	H. D. Gherardini	E. D. Kuster
M. E. Watts	W. J. Tibbs, Jr.	J. T. Tickus
L. L. Haney	H. E. Sloat	C. R. Knox
X. C. Blackburn	B. J. Goddard	H. E. Bushong
L. L. Nalewajke	H. I. Owens	V. Garrison
W. M. Mefford	F. L. Myers	L. H. Bailey
K. R. Jackson	J. D. Jackson	A. D. Foutch
I. C. Benjamin	F. J. Ragusa	F. L. Beppler
Otto Wanzo	J. C. Goforth	C. L. Stuber

H. Fowler	E. L. Hollingshead	H. F. Tate
E. B. Miller	P. H. McBride	D. R. Brewer
T. L. Smith	R. Haizlip	D. L. Hall
I. R. Prosise	B. G. Bryant	B. L. Hiltibidal
M. E. Bryant	L. W. Corson	

EMPLOYES' STATEMENT OF FACTS: Carman H. D. Draege and the 85 other car department employes named in the "Claim of Employes", hereinafter referred to as the claimants, reported for work on May 9, 1961 for the Illinois Central Railroad, hereinafter called the carrier, at approximately ten (10) minutes before 7:00 A. M.; 7:00 A. M. is starting time at the Illinois Central Car Department, Centralia, Illinois. The claimants were not permitted to start work. There had been a heavy rain storm in Centralia which had caused flooding of the Centralia city water system, but not the car shops. Junior employes in train yards, repair track and "B" yards were permitted to work their tour of duty but the carrier suspended operations in the car shops thereby illegally effecting a reduction in the force of 86 employes without any notice whatsoever.

This dispute has been handled in accordance with the controlling agreement and on September 2, 1961 was appealed to the Manager of Personnel, Mr. R. E. Lorentz, with the result that he has declined to make a satisfactory adjustment. The Agreement effective April 1, 1935, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that the carrier, on May 9, 1961, proceded without any agreement authority to reduce its force of Carmen without notice at Centralia, Illinois.

Rule 32 of the controlling collective bargaining agreement, captioned "SENIORITY", reading:

> "Rule 32. Seniority of employes in each craft (except electricians per Rule 124) covered by this agreement shall be confined to the point employed in each of the following departments:
>
> Maintenance of Equipment
>
> Two sub-divisions of Sheet Metal Workers as follows:
>
> Sheet Metal Workers (excluding molders)
> Molders
>
> Four sub-divisions of Carmen as follows:
>
> Pattern Makers
> Upholsterers
> Painters
> Other Carmen.
>
> The seniority lists based on actual service record, will be posted in January of each year and will be open to inspection and copy furnished the committee. Unless a written protest is made by men in active service within thirty (30) days from date of posting seniority list, dates shown thereon will not thereafter be changed."

provides for the establishment for the seniority of carmen at the point of Centralia, Illinois.

Rule 28 of the agreement, captioned "REGULATION AND RESTORATION OF FORCES" clearly provides for a four day notice before reducing forces. Other rules under that caption provide for transportation, transfers and rates of pay.

ARTICLE VI of the August 21, 1954 agreement provides—

> "Rules, agreements or practices, however established, that require more than sixteen hours advance notice before abolishing positions or making force reductions are hereby modified so as not to require more than sixteen 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 positions to be abolished or the work which would be performed by the employes involved in the force reductions no longer exists or cannot be performed."

which reduced the requirements providing for advance notice and would, if properly applied, require no less than sixteen hours advance notice when the carrier suspends its operations because of emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike. In the instant case, there was no emergency as contemplated by the rules because the claimants' work did not cease to exist. If the conditions affecting the city water facilities could properly be construed as being in an emergency condition within the terms of the agreement, then the carrier is required to give such employe a minimum of sixteen hours advance notice which it did not do.

CARRIER'S STATEMENT OF FACTS:

The carrier maintains general car building and repair facilities at Centralia, Illinois, where it employs carmen and other shop craft employes represented by System Federation No. 99. Emergency flood conditions existed at this point on May 9, 1961, necessitating a temporary suspension of work on the first shift and giving rise to this claim.

There is no dispute as to the facts, but the carrier shall, nevertheless, describe them in order to provide some background for this case.

For a period of several days prior to the claim date, May 9, 1961, The City of Centralia was subjected to extremely severe downpours. The heavy rainfall resulted in an accumulation of water which, while not actually flooding the car shop, flooded the city water facilities. The car shop at Centralia, we might mention, has no way of securing water other than from the City of Centralia.

As evidence of the severity of the downpours and subsequent conditions at Centralia, the carrier submits the following excerpt taken from the front page of the May 9, 1961 edition of the Centralia Sentinel.

> "An additional 1.59 inches of rain fell yesterday boosting the May total to 10.3 inches, a new record for the month. William Gaston, Raccoon Lake custodian, said the rainfall totals for the month are May 5—.65; May 6—1.78; May 7—6.28; and yesterday's 1.59.
>
> The month's total, accumulated in just nine days, represents the third highest since The Sentinel started keeping statistics in 1945.

The most rain in any month was August, 1946, when 14.3 inches fell. Ranking second is March, 1945, with 10.44 inches.

* * *

More Rain Falls

After Sunday's downpour Centralia was hit with .96 of an inch rain from 7 to 10:30 a.m. yesterday and last night another brief storm dropped .63 of an inch * * * "

On the evening prior to the claim date, General Superintendent of the Car Shop H. H. Young was advised by the city manager that water was going over the dam at Raccoon Lake (which is located just outside of Centralia), causing a shutdown of the city's pumping equipment. Mr. Young again contacted the city manager at about 9:00 p.m. on May 8, 1961, and was informed that efforts were being made to secure pumping equipment from another city, and that there was a possibility pressure would be restored by the starting time of the first shift on the next day, May 9, 1961. Mr. Young checked the situation at 10:00 p.m., again at 1:00 a.m. on the 9th, and finally remained at the scene from 5:00 a.m. until 6:45 a.m., at which time it became obvious to him, as well as to other industries which had already issued orders not to work, that water could not be furnished until sometime in the afternoon of May 9. At 6:50 a.m., Mr. Young called his office and issued instructions to the effect that the first shift at the Centralia Car Shop would not work on May 9, 1961. Therefore, as a result of the emergency conditions created by the flood, the claimants, who were assigned to the first shift at the car shop, were not worked as a protective and safety measure to themselves and to the carrier's facilities and equipment.

Among other things,, there was no water supply, sanitary or otherwise, for drinking purposes as required in Agreement Rule 46, which reads:

"CONDITIONS OF SHOP, ETC.

Rule 46. Good drinking water and ice will be furnished. Sanitary drinking fountains will be provided where practicable. With the co-operation of employes, pits and floors, lockers, toilets, and wash rooms will be kept in a clean, dry and sanitary condition. Shops, locker rooms and wash rooms will be lighted and heated in the best manner possible consistent with the source of heat and lights available at the point in question."

There was, in addition, no supply of water to take care of the employes' personal washing needs and toilet facilities. More importantly, there was no city water pressure necessary for operating the acetylene generator plant, cooling the electric air compressors, or extinguishing a fire which could very easily have started from the use of more than 200 cutting and welding torches which would have been in operation, had the claimants worked on this date. In fact, the carrier experienced such a fire at this point in the late thirties, which resulted in the destruction of the entire shop. In short, it would not have been possible, under the circumstances, for the claimants to have been permitted to work.

As a result of the conditions described above, the shop work was suspended temporarily for one shift. As soon as the water supply was restored, the employes were allowed to return to work. In fact, it was only after every possible

effort had been made to restore forces, that the employes were allowed to return to work on the second shift.

The employes progressed the present claim, alleging that the carrier violated article VI of the national agreement of August 21, 1954, when it failed to give its shop employes at Centralia proper notice under the agreement. The carrier denied the claim on the basis that the provisions of article VI of the August 21, 1954 agreement were not, as shall be seen, applicable to this case because no positions were abolished, and there were no force reductions, but the shop work was simply suspended temporarily because of the emeregncy conditions as contemplated in Rule 31.

POSITION OF CARRIER:

As shown in the Carrier's Statement of Facts, the work normally performed by the claimants simply could not be done under the emergency conditions which existed at the car shop, and the carrier temporarily suspended work on the first shift. The carrier submits and will show that a temporary suspension of work in such circumstances is contemplated and provided for by rules of the agreement.

There is, first of all, no rule or combination of rules that could be construed to guarantee the claimants not less than 40 hours' pay in a week. In fact, this was so recognized in Second Division Award No. 1606, involving a dispute between these same parties. In his findings, Referee Carroll R. Daugherty held, in part,

> "In determining this issue we note first that there is in the parties' agreement(s) no specific rule directly guaranteeing five days of work per week. We are then led to inquire whether other rules, including those of the 40-hour week agreement (which was incorporated into the parties' rules agreement as of September 1, 1949), can reasonably be interpreted, separately or collectively, as providing such a guarantee.
>
> We do not find that any or all of the 40-hour week rules imply a strict guarantee of five days of work per week for any employe. These rules provided for the reduction of work weeks from six or seven days to five; and they provided for implementing this reduction. But they do not appear to say, directly or indirectly, that an employe assigned to a five-day work week must be used every day of such work week under all circumstances."

The Employes, in alleging that the claimants are each entitled to eight hours' compensation, are apparently attempting to write a guarantee into the agreement where none now exists. In effect, they are contending that an employe assigned to a five-day work week must be used every day of such work week under all circumstances. Nothing could be more wrong. There is no rule or combination of rules indicating such a restriction on the carrier's alternatives. The carrier has two alternatives; it may work the men, or it may not. This is especially true in emergency conditions such as those existing in the instant case. If employes work under such conditions, they are compensated for time actually worked; if they perform no work, they are naturally not compensated. In other words, the agreement does not,, in such circumstances, require the carrier to maintain a force of employes for whom no possible work exists.

The agreement does, however, contain a rule which recognizes that there are circumstances in which it is impossible for the employes to work, and which has been construed to mean that the employes need only be paid for work actually performed. The carrier refers to rule 31, which reads as follows:

> "Rule 31. Employes required to work when shops are closed down, due to breakdown in machinery, floods, fires, and the like, will receive straight time for regular hours, and overtime for overtime hours."

This rule governs situations such as the instant one when shops are closed down because of emergencies. It specifically provides that employes required to work during such emergencies will be compensated only for time actually worked, and at the rates provided in the rate schedule either at straight time or at overtime, depending upon the number of hours worked. Manifestly, the rule contemplates that employes who do not work because of such emergency conditions are not entitled to any compensation.

The absurdity of the employes' position is evidenced by the clear and unambiguous language of the rule. The rule simply means what it expressly states. If the claimants had worked 7 hours,, they would be entitled to 7 hours' compensation; if they had worked 4 hours, they would be entitled to 4 hours' compensation. In the instant case, the claimants are claiming 8 hours' pay when, in fact, they did not perform any work. The employes have apparently reasoned, by some spell of magic, that even though the claimants did not perform any work, they are entitled to compensation — that, in fact, they are entitled to more compensation for not working than they would be had they actually performed service!

To further point out the absurdity of the employes' apparent position, the carrier refers the board to Second Division Award No. 3161 with Referee D. Emmett Ferguson. In this case, which involved similar circumstances and rules, the claimants — machinists and machinist helpers — after having been permitted to work 5 hours, were sent home by the carrier without notice due to flooding conditions. They claimed that they should be compensated for the additional 3 hours during which time they did not perform any service.

The board denied the claims, holding, in part, that, "The rule cited here [which was identical to rule 31 in the instant case] is permissive, and in closing the airbrake shop it was not violated by the carrier."

It is noteworthy that in the case cited above, the board held that the claimants, while compensated by the carrier for the 5 hours during which time they actually performed service, were not entitled to the additional 3 hours' compensation inasmuch as they did not perform any service. In effect, the board held that the carrier could, under a rule identical to rule 31, send the shop employes home early (and without advance notice) and need only pay them for time actually worked.

By the same reasoning, it is only logical to assume that the carrier would not have to compensate the claimants in the instant case, for they performed no work whatsoever. Clearly, if, as the board has held, the carrier could properly send employes home early and not be required to pay them for time not worked, by no stretch of the imagination would the carrier be required to compensate employes who were sent home before they were even permitted to start work.

In view of the foregoing, the carrier submits that the employes cannot logically — or in any other way — contend that the claimants are entitled to

the compensation which they claim. The carrier further submits that none of the claimants were worked and none were entitled to compensation on May 9, 1961, as specifically contemplated in agreement rule 31.

Turning specifically to the assertions made by the employes in the handling of this case on the property, they have alleged a violation of article VI of the August 21, 1954 Agreement, which reads as follows:

"ARTICLE VI — CARRIERS' PROPOSAL NO. 11

> Establish a rule or amend existing rules to provide that in the event of a strike or emergency affecting the operations or business of the Carrier, no advance notice shall be necessary to abolish positions or make force reductions.
>
> This proposal is disposed of by adoption of the following:
>
> Rules, agreements or practices, however established, that require more than sixteen hours advance notice before abolishing positions or making force reductions are hereby modified so as not to require more than sixteen 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 positions to be abolished or the work which would be performed by the employes involved in the force reductions no longer exists or cannot be performed.
>
> This rule shall become effective November 1, 1954, except on such Carriers as may elect to preserve existing rules or practices and so notify the authorized employe representative or representatives on or before October 1, 1954."

It is apparently the employes' contention that a violation of the above rule occurred because the carrier reduced force without giving notice 16 hours in advance; that is, the claimants were subjected to a reduction in force without proper notice.

In answer to this erroneous contention, it is the carrier's position that the notice requirements of article VI had absolutely no application in the emergency condition which existed in the instant case. The shop work was merely suspended temporarily for one shift due to the flooding conditions. The positions of the claimants were not abolished, nor was it the carrier's purpose or intention to reduce forces assigned to work at the car shop. Moreover, the carrier did not change the number of positions assigned to work in the shop or make any overall reduction in its operations.

In these circumstances, it bears repeating that the shop work was suspended temporarily for one shift. Had the claimants actually performed service, they would have received compensation as contemplated in rule 31. **Inasmuch as they did not perform any service, it is clear that they are not entitled to any compensation. It is equally clear that rule 31 governs completely, as opposed to the general rule requiring notice in reduction of force.**

While rule 31 is self-explanatory in that it manifestly permitted the carrier to dispense with the services of the claimants without notice (subject only to the requirement that it compensate those employes who did actually perform

service), the carrier will cite several Second Division Awards to show just how well established this reasoning has been.

The board's attention is called to Second Division Award No. 1701 with Referee Adolph E. Wenke, which involved circumstances and rules almost identical to those in the instant case. In this case, the carrier had given advance notice of a planned reduction in force to five of the ten claimants. A flood, however, occurred before the notice became effective, and it was not possible to work the regular force. As a result, the claimants were laid off during the period of the flood. The claimants alleged that they had been improperly furloughed without the five days' notice required by the particular rule covering force reductions.

The Referee held that in such emergency situations where work ceases to exist, **the provisions of special rules (such as rule 31 in the present case) take precedence over any generally applicable rules covering reduction in force (such as article VI of the August 21, 1954 agreement).** Specifically, the following excerpt is taken from the Opinion in Award No. 1701:

> "Rule 69 deals specifically with situations where work ceases to exist because of emergency situations, including floods. That was the situation at Kansas City Terminal Yards on July 13, 1951. Rule 69 [corresponding to Rule 31 in the present case] is a qualification of Rule 48 [corresponding to Article VI in the present case] when a situation exists to which Rule 69 has application. When Rule 69 has application the Company is not required to give employes, whose services are no longer needed because the work they normally performed has ceased to exist, the five working days' notice required by Rule 48 before it can place them on a furloughed status. **It can do so immediately but if it should require any employe or employes so furloughed to perform work it must pay them according to the provisions of Rule 69.** That is what the Company did and, in doing so, it complied with its agreement with its electrical workers represented by the International Brotherhood of Electrical Workers, System Council No. 24." (Emphasis ours.)

While this award expressly holds that general reductions in force rules have no application to emergency situations such as existed in the instant case, the carrier also calls the board's attention to Award No. 1738 with Referee Wenke. This case involved a claim that the carrier did not comply with the provisions requiring notice in case of reduction in force. The carrier had laid off a number of shop craft employes without notice because of a strike by operating employes. The carrier based its action on a rule governing the emergency closing of shops, which was almost identical to rule 31 here.

While the board held that a strike was not an emergency of a type which justified the application of emergency closing rules, **the opinion makes it manifest that if such emergencies arise, the carrier is permitted to shut down shops without notice and without compensating employes for work which cannot possibly be performed.** The following excerpt from the Findings of that award is plain and pertinent:

> "Rule 30 [corresponding to Rule 31 in the present case] deals specifically with situations where work ceased to exist because of accidents to shop equipment. We think, to that extent, it is a qualification of Rule 27 (b) [corresponding to Article VI in the present case] when a situation arises to which it has application. When Rule 30 has appli-

cation we do not think the carrier is required to give employes, whose services are no longer needed because the work they normally perform has ceased to exist, the four days' notice required by Rule 27 (b). **It can release them immediately but if it should require any employe or employes affected thereby to perform work during the period such condition continues to exist it must pay them according to the provisions of Rule 30.** See Award 1701 of this Division.

We can only apply Rule 30 to situations covered thereby. In that regard we call special attention to the fact that the rule involved in our Award 1701 contained the express language when shops or yards are closed down 'Due to Emergencies.' Here the title to Rule 30 refers to 'Accidents to Shop Equipment.' Significantly the rule refers to three specific situations that would have that effect namely, breakdown in machinery, floods and fires. However carrier seeks to bring itself within the language 'and the like.' In the sense here used that language relates to conditions similar to those specifically referred to in the rule itself; that is, conditions which result in the shop equipment being put out of physical use. By no logical reasoning can a strike be said to have that effect nor can it be said that it results in an accident to the shop equipment. In fact, the physical equipment was fully capable of being used. No situation existed to which Rule 30 has application." (Emphasis ours.)

In view of the foregoing awards, it is as plain as can possibly be that rules such as rule 31 permit a carrier to lay off employes for whom no work is available without notice, and that such rules take precedence over a general rule (such as article VI) requiring advance notice in reduction in force. **In such circumstances, the carrier may send employes home immediately, and need only to pay them for time actually worked.**

The carrier further submits that at pages 6 and 7 of the printed award No. 1738, there is found historical material which clearly indicates that this application of emergency closing rules has been established since federal control of the railroads in 1919. The following is taken from pages 6 and 7 of printed Awards No. 1738:

"It is important to note that the original rule, like the present rule, referred to a situation where 'it becomes necessary to reduce expenses.' Throughout the history of the rule, this basic purpose has been preserved. It is significant that at no time did this rule make any mention either directly or indirectly to emergency situations such as those produced by a cessation of railroad operations and disappearance of the work normally performed.

Actually such emergency situations had been contemplated, and were specifically covered by interpretations under Rule 30. During the time the so-called National Agreement was in effect for a time following 1919, disputes arose as to the meaning of Rule 27 as it then existed. In the exercise of authority vested in him by law at that time, the assistant director, United States Railroad Administration, issued an interpretation of this rule under date of January 19, 1920 which was for the guidance of the parties in applying it on the individual railroad properties. In this interpretation the director general made the following statement of principle to be observed in the application of the rule:

'Under Rule 27, seniority will govern when reducing forces. Mechanics do not hold seniority over helpers. Forces may be reduced—hours cannot. **Under conditions specified in Rule 30, shops may be closed down without giving 5 days' notice, as provided for in this rule.'** (Emphasis ours).

National Agreement Rule 30, referred to in this interpretation, read as follows:

'Employes required to work when shops are closed down, due to breakdown in machinery, floods, fires, and the like, will receive straight time for regular hours, and overtime for overtime hours.'

The first paragraph of current Rule 30 (agreed to July 1, 1921 as a substitute for National Agreement Rule 30) is essentially the same as the National Agreement Rule. Current Rule 30 reads as follows:

'Employes required to work when shops or any department thereof are closed down due to breakdown in machinery, floods, fires and the like, will receive straight time for regular hours, and overtime for overtime hours.

It is understood that such men as are qualified for the work to be done will be used to do the work of his craft.'

An interpretation of this rule, which also has great importance in emphasizing the rights of the carrier in situations similar to the one involved in the instant dispute, is that contained in a letter written by the assistant director, United States Railroad Administration, under date of January 19, 1920 to the federal manager of the C.C.C. & St. L. R.R. (one of the operating districts of this carrier), the pertinent part of which read as follows:

'Employes **should** be notified, **if possible,** before reporting for duty when shop is shut down due to causes specified in Rule 30. Employes worked two hours and then relieved on account of shop being shut down, due to causes specified in Rule 30, should be paid for **time actually worked.'** (Emphasis ours).

This answer was made to an inquiry as to how employes who had worked less than a day (in this case only 2 hours) should be paid when a shop was closed down due to an emergency as referred to in National Agreement Rule 30. The assistant director's reply, just quoted, clearly indicates that in such situations the employes are not entitled to 'Four days' notice' or even to a minimum day of 8 hours, but only to pay for the time actually worked, which on that occasion amounted to only 2 hours."

The above historical information evidences that the interpretation of emergency closing rules, as they are related to rules having to do with general reduction in force, in award Nos. 1701 and 1738, was in accordance with the established interpretation of these rules, and which involved rules similar to those in the present case.

While the above awards speak for themselves, the carrier again refers the board to the denial opinion rendered in Second Division Award No. 3161,

also involving a claim similar to the one here, and where almost identical rules were applicable. The findings state in part as follows:

> "The parties here have entered into the following:
>
> JOINT STATEMENT OF AGREED UPON FACTS:
>
> On Monday, afternoon, June 24, 1957, about 6:30 P. M., there was an extremely heavy rain storm in the Altoona area, which resulted in an accumulation of water over the floor of the Air Brake Shop. Also, due to the accumulation of water in the power ducts, the power for operating machines and lights in the Air Brake Shop failed.
>
> The men from the Air Brake Shop as listed in the above subject were sent home at 9:00 P. M. on Monday, June 24, 1957, due to the above-mentioned conditions.'
>
> The men sent home were paid for the hours actually worked. The company claims that Rule 4-L-1 is authority for the action taken. The rule reads as follows:
>
> 'Shops closed down — 4-L-1. Employes required to work when shops are closed down, due to breakdown in machinery, floods, fires and the like, will be paid as provided for in the Rate Schedule and Rules 4-A-1 and 4-A-2.'
>
> The organization insists that the word 'Shops' as used in the rule refers to an entire facility and that the Juniata Shops were not closed down on the day in question. This argument is carried further by showing that scores of men who were within a stone's throw of the airbrake shop were permitted to finish out the day.
>
> From the awards cited we are of the opinion that strike situations on the one hand, and emergency situations such as floods and fires on the other, have been treated differently by the Board. The rule cited here is permissive, and in closing the airbrake shop it was not violated by the carrier."

It is significant that in the above cited case, the carrier defended its action on the basis of a rule governing the emergency closing of shops which was almost identical to rule 31 in the present case. Also significant is the fact that the board in award No. 3161 relied heavily upon those awards cited above by the carrier.

The awards cited above, and relied upon in award No. 3161, have many things in common with the present case. They deal with similar factual situations; they deal with almost identical rules; and, they hold that a rule similar to rule 31 permits a carrier to lay off employes for whom no work is available without notice, and that such rules govern completely as opposed to a general rule requiring notice in reduction in force. In the light of the established precedents in this area, the carrier submits that the relation between rule 31 and article VI of the August 21, 1954 agreement has been well established, and that the carrier's application of those rules in this case should be sustained in the same manner as has been done in the foregoing precedents.

The carrier, in summary, submits and has shown that the applicable rules agreement contemplates the action taken by the carrier and provides a special basis of pay for employes affected by emergency closing of shops. Specifically, it has shown,

1. That the suspension of work involved herein was caused by an Act of God,

2. That there is no rule or combination of rules guaranteeing the employes 40 hours' work per week under any circumstances, much less in emergency conditions such as existed here, where the carrier had no alternative but to suspend work on the first shift.

3. That rule 31 expressly states that employes will be compensated only for time actually worked in such circumstances,

4. That, inasmuch as the claimants did not perform any service in the instant case, they are not entitled to any compensation.

5. That to sustain the employes' claim would be to rewrite the agreement, for it would modify both rule 31 and article VI of the August 21, 1954 agreement, and write into the agreement a guarantee rule where none now exists.

There has been no violation of the agreement and the claim should be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

On May 9, 1961, Carrier issued instructions at 6:50 A. M. that the first shift at the Centralia, Illinois Car Shop (7:00 A. M. to 3:00 P. M.) would not work on that day.

Claimants are the 86 employes affected by such order, alleging a violation of the current Agreement, and seeking reimbursement at the pro rata rate for May 9, 1961.

Because of flood conditions just outside of Centralia, beginning on May 8, 1961, the city water supply upon which the Car Shop depended for water was unavailable to the Carrier for the operation of the equipment in the Car Shop. We find that an emergency did exist, and that no work could safely or properly be performed in the Car Shop during the first shift on May 9, 1961. Work was resumed during the second and succeeding shifts.

Claimants maintain that this was a reduction in force, and that proper notice was not given, in violation of the controlling agreement.

Carrier contends that this was not a force reduction, but a temporary suspension of work caused by an emergency situation over which it had no control; that no notice was necessary, and no notice was possible.

Claimants rely upon Article VI of the National Agreement of August 21, 1954 which reads in part as follows:

> "Rules, agreements or practices, however established, that require more than sixteen hours advance notice before abolishing positions or making force reductions are hereby modified so as to not require more than sixteen 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 positions to be abolished or the work which would be performed by the employes involved in the force reduction no longer exists or cannot be performed."

Carrier cites Rule 31 of the controlling agreement which reads as follows:

> "Rule 31. Employes required to work when shops are closed down, due to breakdown in machinery, floods, fires and the like, will receive straight time for regular hours and overtime for overtime hours."

Carrier states that Rule 31 permits it to lay off employes without notice when no work is available for them due to emergency conditions. We fail to find this in Rule 31, except by the following unacceptable analogy: Since Rule 31 provides for compensation only for time actually worked during the emergency, then one working four hours shall be paid for four hours; one working one hour shall be paid for one hour, and one not working shall not be paid. Therefore no notice is necessary to close down the Shop because of an emergency. We do not so construe Rule 31. It is a pay rule, and nothing more.

The question remains whether or not this was a force reduction under circumstances which brought Article VI of the 1954 Agreement into play. We hold that it was a force reduction, even though for one shift only. We further find that the work which would have been performed by the Claimants could not be performed because of the emergency conditions, and that Article VI does apply here.

But Carrier asserts that even if Article VI does apply, the Claimants misconstrue the sixteen hour notice provision of the Rule. Carrier maintains that the sixteen hour notice called for is a maximum time and not a minimum time within which to give notice, and therefore any notice up to sixteen hours would be adequate. However, it must be borne in mind that Article VI is a modification of other existing Rules or practices, (here Rule 28), and it modifies the 4 day notice of Rule 28 to 16 hours, and does not establish a maximum time within which to give notice as contended by the Carrier.

As was stated in Award 1738 of this Division:

> "Under the situation existent on the carrier it may seem extremely harsh to require payment of this claim but we can only interpret and apply the provisions of the agreement the parties have entered into. We have no equity powers to relieve from a harsh situation, nor is it

our prerogative to rewrite the rules of an agreement by means of an award."

AWARD

Claim 1: Sustained.

Claim 2: Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1964.