

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31300
Docket No. MW-30947
95-3-92-3-829

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former
Louisville and Nashville Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to give Foreman L.D. Noland a timely and proper five (5) day job abolishment notice [System File 2(107)(91)/12(91-1527) LNR].
- (2) The Agreement was further violated when the Carrier readvertised the same position with rest days as Monday and Tuesday, rather than Saturday and Sunday.
- (3) As a consequence of the violation referred to in Part (1) above, the Claimant shall be compensated at the foreman's rate of pay for all time lost.
- (4) As a consequence of the violation referred to in Part (2) above, the Claimant's rest days shall be changed to Saturday and Sunday and he shall be compensated for all wage loss suffered."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon

At the time this claim arose, Claimant was assigned as a Foreman on Force 6C06, headquartered at Lexington, Kentucky. Claimant's workweek was Monday through Friday, with rest days of Saturday and Sunday. On May 13, 1991, Claimant's Supervisor issued a notice abolishing Force 6C06 as of end of business on May 17, 1991. Shortly thereafter, Claimant bid on and accepted a Truck Driver position at a lower rate of pay. That position had rest days of Monday and Tuesday.

By letter of August 23, 1991, the Organization submitted a claim alleging that Carrier had violated various Rules including Rule 21, when it failed to give Claimant proper notice of his job abolishment and changed the rest days of the Truck Driver position into which Claimant bid without showing "operational need" to do so. Carrier denied the claim, pointing out that Claimant had been verbally informed that his position was about to be abolished, and that the Agreement was not violated with respect to rest days because the work was changed.

There is no basis on this record to support Paragraph 2 of the Organization's claim. It is apparent that the job bid into by Claimant was originally established with rest days of Monday and Tuesday, and that Claimant was aware of that fact when he bid on the position. Since Carrier operates seven days a week, it is to be expected that some jobs will have rest days other than Saturday and Sunday, and that when employees transfer to such positions, their rest days may be different from what they were on the employees' former position.

With respect to Paragraph 1 of the claim, however, the provisions of Rule 21(b) are clear:

"... Five working days' notice will be given to men affected before the reductions are made, this five (5) working days' notice not to apply when immediate unforeseen reductions are necessary account of inclement weather. It is understood, that the five (5) days' notice will be a written notice to each individual involved in a particular force reduction."

It is unrefuted on this record that the written notice to Claimant was dated and received only four days prior to the abolishment of his position. Carrier protests that the fact that Claimant bid on and accepted another job without losing a day's work demonstrates that he knew in ample time that his position was to be abolished. That argument is without merit.

In a similar case involving these Parties, Third Division Award 29865 held:

"... The language of the Rule is clear. Employees affected by a force reduction are entitled to be given a written notice five working days before the reduction will be made. If the notice is given after the working day starts, but the employees affected were told verbally before the working day started, that day still cannot be counted because the Rule makes it clear that the notice must be a written notice. No exception is provided. None can be implied."

In light of the fact that the notice to Claimant was defective by a single day, this Board finds that he is entitled to the difference between his Foreman's pay (the abolished position) and what he received in his subsequent Truck Driver's position, for one day.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of January 1996.