Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12734
Docket No. 12556
94-2-92-2-74

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(
(Consolidated Rail Corporation (Conrail))

STATEMENT OF CLAIM:

"Claim on behalf of Electrician D. Lewis submitted to the Consolidated Rail corporation, Avon Diesel Terminal, Indiana, by the Organization in a letter dated February 28, 1991 as follows:

This is a claim on behalf of Electrician D. Lewis for five days pay (40 hours).

On February 6, 1991 the carrier violated the controlling agreement and in particular Rule 3-C-1(a) when they failed to give five working days notice to the Claimant when they arbitrarily attempted to abolish his job.

Since no abolishment notice was ever issued to the Claimant, his job has not been abolished.

The carrier compounded their error in removing, illegaly, (sic) the claimant from his job.

Additionally, the carrier is violating Second Division Board Award 8198 - same issue, same carrier, same union and the same Local Chairman.

Please advise us when payment is made."

FINDINGS:

The Second 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.

In this instant Claim, the Organization contends that the Carrier violated the Agreement Rule requiring a five (5) day notice for a position abolishment. Claimant held position E-12 an Electrician at the Avon Diesel Terminal, Avon, Indiana with Saturday and Sunday as rest days. By date of February 6, 1991 while the Claimant continued to occupy his E-12 position, the Carrier posted notice of "Realignment of Forces" stating that the E-12 position would be "readvertised." Claimant who was the incumbent of E-12 was placed on the readvertised position with a change in rest days.

The Organization argues that job E-12 was not abolished. It holds that the Carrier arbitrarily denied the Claimant his Agreement rights to exercise seniority when the Carrier changed the rest days of the assignment. The Organization further argues that there is nothing in the Agreement permitting Carrier this right of "realignment" without advertising per Rule 2 and abolishment per Rule 3.

The Carrier denies it violated any Agreement Rule and specifically holds in its ex parte submission that the Organization amended its Claim by enlarging the original issue of abolishment to include as it appealed the Claim the issue of a Rule 2 violation. On merits, the Carrier points to the abolishment notice of February 6, 1991 which in abolishing three positions required a realignment of two other positions which included the Claimant's position E-12. The Claimant was clearly aware that his position was to be readvertised and in fact was the successful bidder. The realignment of forces took place without any loss to the Claimant. The Carrier argues this Claim lacks factual support and is excessive.

The Board finds that the Claim before it is the same Claim as developed on property. While the Organization did raise Rule 2 during appeals, its initial Claim and that presently before this Board is a violation of Rule 3. Finding no procedural error, the Board has reviewed the pertinent part of Rule 3 which states:

"Notice of force reduction or abolishment of position at any point or in any department shall be posted or given as soon as possible and not less than five (5) working days in advance, except no advance notice to employees shall be required before temporarily abolishing positions or making temporary force reductions under emergency conditions, such as flood...."

This Agreement Rule is specific in its language and requires in these instant circumstances a five (5) days notice. There is no Carrier denial on the property that an abolishment notice for position E-12 was not issued. The Carrier has pointed to no Agreement Rule permitting realignment of positions or whereby realigned rest days necessitated by abolishments of other positions were an on-property practice. There is no probative evidence that the abolishments were temporary or that emergency conditions prevailed. The Board finds that the Carrier failed to include the Claimant's E-12 position in its abolishment notice.

Having found an Agreement violation, the Board has reviewed the Organization's Claim for five (5) days pay. We cannot agree. The Carrier provided evidence of record that the Claimant was fully compensated on this position. Claimant held this position on February 6, 1991 and continued on the position while bids were accepted until February 13, 1991. Claimant was the successful bidder and assumed the same position with new rest days on February 17, 1991. The Organization does not deny on property that payroll records established that Claimant was correctly compensated throughout the period herein disputed and thereby lost no wages. What the Organization argues ex parte is that the Carrier should be assessed punitive damages to assure future Agreement compliance. This Board finds no evidence of a pattern of abuse, an historical attempt to flaunt the Agreement, future occupational harm to the Claimant or anything other than a technical violation for which there were no actual damages. While the Agreement was violated, there is no probative evidence to sustain the Claim for five days pay.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

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 Second Division

Dated at Chicago, Illinois, this 13th day of September 1994.