

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13991
Docket No. 13875
09-2-NRAB-00002-080025**

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

**(Brotherhood Railway Carmen Division of TCIU
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 6.1, when they failed to give Carman Timothy Locke the required time when they abolished his position at Waterville, ME.**
- 2. Accordingly, the Springfield Terminal Railway Company be required to compensate Carman Timothy Locke in the amount of eight (8) hours straight time for Friday, March 30, 2007, six (6) hours pay at the rate of time and one-half for March 31, 2007, eight (8) hours at the rate of double time for April 1, 2007, eight (8) hours at the rate of time and one-half for April 2, 2007, and eight (8) hours at the rate of time and one-half for April 3, 2007. This is the amount he would have earned had the Carrier not violated the Agreement.”**

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 were given due notice of hearing thereon.

The Carrier issued an Abolishment Notice at 1:00 P.M., on Wednesday, March 28, 2007 to inform the Claimant that his Position No. C-40 at Waterville, Maine, would be abolished at the end of the day on Sunday, April 1, 2007.

The pertinent Rule in dispute is Rule 6.1 which states:

“The Carrier has the right to abolish any position provided the employees affected are notified at least 5 working days prior to the effective date of the abolishment.” (Emphasis added)

It is the Organization’s position that the Carrier has the right to abolish any position provided that the employees affected are notified at least five working days notice prior to the effective date of the abolishment. It argued that the Claimant was not provided five working days notice prior to the abolishment of his position because he was on his rest days on March 31 and April 1, 2007. Therefore, he was only given three working days which was a violation of Rule 6.1. Because of that violation it requested that the claim be sustained as presented.

It is the position of the Carrier that it complied with Rule 6.1 because the Waterville Car Department is in operation seven days per week. It argued that every day is a “working day” at Waterville, Maine. Therefore, the notice at issue was posted from March 28 through April 1, with the abolishment to be effective after April 1, 2007. Thus, all employees affected by the abolishment were provided five full working days notification. It concluded there is no basis for sustaining the present claim.

The Board thoroughly reviewed this dispute which raises the question of what constitutes a proper five day abolishment notice. The question posed is whether the five working days refer to each individual position or may the Carrier count all days as “working days” because its facility is a seven day operation. Although, the

Organization's and Carrier's arguments as to how Rule 6.1 should be interpreted are both reasonable, our close examination of the record reveals that the Carrier's interpretation of the Rule has been the historical practice. In its letter of August 24, 2007, the Carrier stated: "The Carrier complied with Rule 6.1, consistent with the manner in which this Rule is written and has been applied since the inception of the Agreement." (Emphasis added). The Carrier's position was not refuted while the claim was being handled on the property. Therefore, the Board finds and holds that the claim must be denied because the historical practice is consistent with a reasonable interpretation of the Rule and there is no other evidence or proof of a violation of the Agreement.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 11th day of February 2009.