Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10020
SECOND DIVISION Docket No. 9895
2-B&O-CM-'84

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employes:

1. That Carrier violated the terms of the controlling Agreement, when on the date of April 14, 1981, Carrier abolished his job of Car Inspector, Bay View, Baltimore, Maryland, and immediately upon issuance of the abolishment notice, such notice under date of April 14, 1981, Claimant, V. J. Dowling, was instructed by his immediate Supervisor to exercise his seniority without benefit of "five working days' advance notice" as provided in Rule 24 of the controlling Agreement, thus Claimant was obliged to lose one full day, eight (8) hours compensated service.

2. That accordingly Carrier be ordered to compensate Claimant for all time lost account Carrier violation of Rule 24; eight (8) hours pay at the pro rata rate.

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 employes 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.

Relevant portions of Rule 24 follows:

> "Five working days' advance notice will be given to employees affected before the abolishment of positions or reduction in force...."

In presenting argument in support of the claim the Organization outlines the situation as follows:

> "It is the position of the Employes that Carrier has violated the contractual rights of Claimant, causing his to be monetarily injured to the extent of one (1) full day, eight (8) hours pay, when they arbitrarily abolished his position at Bay View, Baltimore, Maryland, position of Car Inspector, Bay View, with hours 7:00 A.M. to 3:00 P.M.,

rest days, Thursday and Friday, and without affording him the mandatory 'five working days advance notice' as per Rule 24 (b), instructed him to immediately, on the date of April 14, 1981, the same date that appears on the abolishment notice, Bulletin # 11, attached hereto as Employes Exhibit (D), exercise his seniority. As per instructed by his immediate Supervisor, Mr. E. Brazil, Claimant did, in fact, exercise his seniority, bumping into the position held by Carman Joffe, Bay View, such position, Car Inspector, 7:00 A.M. to 3:00 P.M. shift, rest days, Tuesday and Wednesday. Claimant had previously during his work week observed rest days of Thursday and Friday. Upon advising his Supervisor of his intention to bump Mr. Joffe, he was informed that he was not to work the following day, that day being April 15, 1981, Wednesday, a rest day of the position he was assuming. Thus, Claimant was forced to lose one (1) full day, eight (8) hours compensated service."

Carrier describes as follows the circumstances out of which the claimant's position was abolished and he exercised his seniority on another position:

"On Tuesday, April 14, 1981, due to physical problems, Bayview, Maryland Carman F. Young removed himself from his regular assignment. In order to fill the vacancy created by Mr. Young's absence, Carmen assignments at Bayview Yard were rearranged. This rearrangement resulted in the abolishment of the 7:00 AM to 3:00 PM assignment belonging to Claimant V. J. Dowling. Mr. Dowling's assignment had rest days of Thursday and Friday."

It is the position of the Carrier that:

1. Claimant Dowling suffered no loss as a result of the April 14, 1981 rearrangement.

2. Carrier handling of the April 14, 1981 rearrangement was not in violation of Rule 24 (b).

The Organization contends for a literal interpretation of Rule 24 (b) and argues that whether claimant lost or gained in earnings as a result of the rearrangement is irrelevant. Thus, the Organization maintains that the rule requires a 5-day notice when there is an abolishment of positions or a reduction in force.

It is clear from data presented in the Carrier Submission that claimant did not lose any earnings as a result of the rearrangement of positions and his exercise of seniority. The complete picture showing claimant's work days and rest days both under his original assignment and the new job to which he exercised his seniority is as follows:

"**** prior to 3:00 PM, Tuesday, April 14, 1981, Claimant Dowling held a 7:00 AM to 3:00 PM assignment with rest days of Thursday and Friday. In other words, effective 3:00 PM, Mr. Dowling had completed four days of his five-day work week (Saturday, Sunday, Monday, Tuesday). Under normal conditions he would have worked Wednesday, April 15 and then observe Thursday, April 16 and Friday, April 17 as rest days.

As a result of the rearrangement, however, Mr. Dowling's assignment was abolished effective 3:00 PM, Tuesday, April 14 and he moved onto a 7:00 AM to 3:00 PM assignment with rest days of Tuesday and Wednesday.

Mr. Dowling observed the Wednesday, April 15 rest day of his new assignment and then resumed work on Thursday, April 16. The result was that during the two-week period beginning Saturday, April 11 and ending Friday, April 24, Mr. Dowling worked eleven days. Over the same time period, had Mr. Dowling retained his original assignment, he would obviously have worked only ten days. Note the following table. The first column indicates the days Mr. Dowling would have worked on his original assignment and the second column indicates the effects of the rearrangement. The symbol 'X' denotes days worked.

	Column I	Column II
Saturday, April 11	X	X
Sunday, April 12	X	X
Monday, April 13	X	X
Tuesday, April 14	X	X
Wednesday, April 15	X	rest
Thursday, April 16	rest	X*
Friday, April 17	rest	X
Saturday, April 18	X	X
Sunday, April 19	X	X
Monday, April 20	X	X
Tuesday, April 21	X	rest
Wednesday, April 22	X	rest
Thursday, April 24	rest	X
Friday, April 24	rest	X

* first day on new assignment

Clearly, as during the first week Mr. Dowling observed only one rest day, Wednesday, April 15, rather than the two rest days, Thursday, April 16 and Friday, April 17, previously assigned, he did not lose eight hours' pay as he alleges but, in fact, as a direct result of the rearrangement, gained an extra eight hours' pay. Mr. Dowling's contention that he suffered monetary loss as a result of the rearrangement simply is without factual support."

The Organization argues that the mere abolishment of a position, even absent a force reduction, is sufficient under Rule 24 (b) to require a 5-day advance notice. Carrier contends this is erroneous and traces the evolution of the rule in support of its position.

The rule resulted from a Section 6 Notice by which the Organization endeavored to provide protection to employes affected by abolishemnt of positions and reductions in force by requesting that:

"all employees who may be affected by such reduction in force or abolition of position will be given not less than six months advance notice thereof...."

Following unsuccessful negotiations to resolve the matter the dispute was referred to Emergency Board No. 145 which recommended:

"We recommend that the parties negotiate a rule requiring not less than five working days' advance notice to regularly assigned employees (not including casual employees or employees who are substituting for regularly assigned employees) whose positions are to be abolished before reductions in force are to be made ...." (emphasis added)

The above recommendations were adopted by the parties in later negotiations and resulted in the provisions of Rule 24 (b) as reviewed herein.

This brief review of the negotiating history leading up to Rule 24 (b) shows clearly that protection for employes affected by the abolishment of positions and reductions in force was the objective sought in the Section 6 Notice. The protection was requested during a period when carmen, as well as railroad employes generally, were suffering severe job losses.

In the instant case the abolishment was not related to a reduction in force but was, in fact, a rearrangement due to Carman Young removing himself from his regular assignment. The rearrangement was necessary to assure adequate staffing of carmen at Bayview Yard.

The Organization insists on the five-day notice stated in the rule without relating to the joint conditions of job abolishment and reduction in force. Clearly these conditions must be considered as coupled together in the rule just as they were in the Section 6 Notice. The instant case did not arise out of a force reduction and claimant did not lose any time as a result of his exercise of seniority. In fact, as shown by the above data presented by the Carrier he actually worked eleven days during the two-week period whereas he would only have worked ten days had he stayed on his original assignment. Common sense and logic requires denial of the claim as being inconsistent with the objectives and conditions set forth in the rule. The claim is advanced on purely technical grounds without taking into account the negotiating history or the purpose served by the rule.

The awards submitted in support of the claim all pertain to situations wherein shift changes were involved. They were cases on different carriers and involved different rules. We cannot accept that they serve as precedents for decision in the instant case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of August, 1984.