

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13512

Docket No. 13264

00-2-97-2-34

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

(International Brotherhood of Electrical Workers
(System Council No. 16)

PARTIES TO DISPUTE: (

(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. That in violation of the controlling Agreement, Rule 23(a) in particular, Electricians G. Arras, R. Swenson and J. Anderson did not receive the proper lay-off notice when the Duluth Missabe and Iron Range Railway Company failed to post a job abolishment notice, which was subsequently a lay-off notice to the Claimants, for the required five (5) days.**
- 2. That accordingly, the Duluth Missabe and Iron Range Railway Company should be directed to compensate Electricians G. Arras, R. Swenson and J. Anderson 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 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.

By Bulletin No. E-040-95 dated August 29, 1995, the Carrier notified the Organization that it intended to abolish ten Electrician positions at Two Harbors, Minnesota, effective end-of-shift Tuesday, September 5, 1995. As a result of Bulletin No. E-040-95, all Claimants, who were employed at the Carrier's Duluth, Minnesota, Ore Dock Facility, were displaced by senior employees from Two Harbors and subsequently laid-off. Bulletin No. E-040-95 was not posted at the Duluth Ore Dock Facility for five days.

In a letter dated October 23, 1995, the Organization filed a claim stating that the improper posting of Bulletin No. E-040-95 deprived Electricians G. Arras, R. Swenson and J. Anderson of their five working days notice of lay-off as stated in the Agreement. Since they received four working days notice, the Organization submitted the claim on behalf of the three Electricians for eight hours' pay each at the straight time rate.

At issue in this case is the application of Rule 23 - Reduction and Restoration of Forces out of the Agreement of October 1, 1979, to which each Parties is signatory. Rule 23(a) reads in pertinent part as follows:

"Except as otherwise provided in this rule, when it becomes necessary for the Carrier to reduce its forces in any department, seniority per Rule 24 will govern. Not less than five work days' notice will be given to the employees to be laid off before the forces are reduced, and a copy of the notice will be furnished the local committee. If the notice is posted by twelve noon, that day shall be one of the five days' notice. . . ."

It is the position of the Organization that Carrier violated the Agreement when it failed to post the job abolishment notice five days as required by Rule 23 (a) at the Carrier's Duluth, Minnesota, Ore Dock Facility where the Claimants were employed.

The Carrier maintains it complied in full with Rule 23 (a) and disputes the Organization's position.

The Board takes note of Second Division Award 2274. In that case, this Board held:

“We think the language used in Rule 22(b) should be applied to the subject of the bulletin to which it relates. In that sense the “men affected” are those whose position are being abolished. If we were to extend its meaning beyond that subject, and relate it to all employes who might become affected because of the fact that the men whose positions were being abolished might have and would exercise their seniority, we would place on the carrier an almost impossible, and certainly an impractical requirement, for carrier would then have to anticipate what each employe was going to do. We do not think such was either the intent, meaning or purpose of the language used.”

In this case, the actual employees to be laid off were notified per Rule 23 (a). That Rule makes it clear that a five-working-day notice is applicable to employees whose positions are abolished. The Board agrees with the above noted Award that it is not possible to predict how many persons will be affected by a force reduction when employees exercise displacement rights. For example, some employees entitled to do so, may, in fact elect not to, or may bid on other, non-related positions. In light of the foregoing, the Board finds no basis on which to sustain the claim.

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 15th day of May, 2000.