Award No. 14393

Docket No. MW-14879

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CENTRAL OF GEORGIA RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it laid off Section Laborers L. D. Razor, W. Starling, Bennie Hankerson and Henry Hankerson at the close of work, Monday, December 17, 1962, thereby depriving said employes of pay for December 18, 19, 20 and 21, 1962. (System Case No. 25-13-114 — Docket MW-9972 — File MW 3098, and System Case No. 15-32-116 — Docket MW-9977 — File MW-3103).

(2) The Carrier again violated the Agreement when it laid off Track Laborers R. H. Berry, D. Plair and J. N. Mozee at the close of work, Monday, March 11, 1963, thereby depriving said employes of pay for March 12, 13, 14 and 15, 1963. (System Case No. 15-35-119 — Docket MW-10026 — File MW 3106).

(3) Each of the track laborers named in Parts (1) and (2) of this claim be allowed thirty-two (32) hours' pay at the track laborer's straight time rate because of the violations referred to in Parts (1) and (2) of this claim.

EMPLOYES' STATEMENT OF FACTS: Claimants L. D. Razor, Ident. No. 71195, and W. Starling, Ident. No. 83657, have established and hold seniority as track laborers and were assigned as such on the District Section — Fort Valley, Georgia.

In accordance with Chief Engineer-Maintenance W. E. Chapman's letter of December 10, 1962, the forces of District Section — Fort Valley, were reduced by two laborers effective with the close of work, Monday, December 17, 1962.

Claimants Bennie Hankerson, Ident. No. 34087, and Henry Hankerson, Ident. No. 34098, have established and hold seniority as track laborers and were assigned as such on the District Section — Savannah, Georgia.

OPINION OF BOARD: Two claims are presented in this dispute. Each involves the same issue.

The first claim concerns four Claimants holding seniority as track laborers. They were hourly rated and worked from Monday to Friday. On December 10, 1962 they were given notice of a reduction effective close of work, Monday, December 17, 1962.

The second claim concerns three Claimants holding seniority as track laborers. Their positions were also hourly rated on a Monday to Friday work week. On March 4, 1963 they were given notice of a reduction effective close of work, Monday, March 11, 1963.

The relief requested for each of the Claimants is 32 hours straight time representing the remaining four working days of the week. Claimants, through the Organization, contend that Carrier violated Rule 15 (b) of the Agreement which states:

> "(b) Regularly established daily working hours will not be reduced below eight hours per day, **nor will the regularly established number of working days be reduced below five days per week**; except in weeks in which holidays occur and then by the number of such holidays." (Emphasis ours.)

Since their work week was Monday through Friday, Claimants assert, the abolishment of their positions at the close of work on a Monday reduced the number of working days of that week below five in violation of Rule 15 (b), depriving them of the right to complete five working days.

In support of their position, Claimants further assert that Carrier's past practice supports this interpretation and as proof of such quote from a letter of instructions by Mr. H. G. Carter, then Chief Engineer, to his subordinates, which stated:

> "A man reporting for duty on the first work day of the week, will be given 5 days work, if this man is willing and able to work."

For reasons best known to the parties, the complete text of the Carter letter was not made part of the record; and, but for the assertion of Claimants that this interpreted Rule 15 (b) to mean that all employes would be allowed a full work week if they worked the first day of that week, there is nothing further in the record to connect the quotation from the Carter letter to Rule 15 (b).

Carrier contends that Rule 15 (b) is applicable only with respect to regularly established positions, not to positions which have been abolished; and as long as adequate notice had been given pursuant to Rule 7 (a), as amended June 5, 1962, that Agreement was not violated.

The record indicates that adequate notice was given to each of the Claimants and is not in issue.

The question presented in this dispute is whether, under the terms of the Agreement, the Carrier has the right to abolish hourly rated positions before the termination of what would have been a scheduled work week.

We find that the rules of the Agreement are clear and unambiguous.

Rule 15 (b) prohibits Carrier from reducing below 5 the number of "regularly established" working days. "Regularly established" working days necessarily assumes the existence of a position — and by definition, excludes applicability when a position is abolished.

Rule 7 (a) prohibits the Carrier from abolishing positions (other than monthly rated) without first giving 5 working days' notice, and that these positions may be abolished at any time as long as the requisite notice is given.

To accept the contention of the Claimants would require the Board to hold that an hourly rated position may be abolished only if the effective date of its abolishment falls at the close of the last day of the employe's work week. This contention is without merit.

Even if we were to find it necessary to look to past practice to glean what was meant by the parties, we would be compelled to hold that the record falls short of providing the quality of probative evidence necessary to satisfy the burden of proof requirement placed upon Claimants. A sentence quoted from an alleged letter of instructions (which was not introduced in evidence) coupled with an assertion by the Organization that this was an interpretation of Rule 15 (b) and therefore evidence of past practice is insufficient.

The paucity of the record in this regard distinguishes Award 13016, relied upon by Claimants. In that case the Carrier vice president explicitly agreed by letter to the general chairman that force reductions would be made only at the conclusion of the work week.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

The Claims are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of May 1966.

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