

Award No. 15405
Docket No. MW-14716

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it failed to give at least five (5) working days' advance notice to Section Laborer Kenneth Blume prior to the abolishment of his position at the close of work on November 6, 1962. (Carrier's Case D-1432.)

(2) Section Laborer Kenneth Blume now be allowed the exact amount of monetary loss suffered because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant was regularly assigned to the position of Flagman with a work week extending from Monday through Friday (rest days were Saturday and Sunday).

The claimant's position was abolished effective with the close of work on November 6, 1962. He was not notified of said abolishment until the afternoon of November 6, 1962, in violation of Article III of the June 5, 1962 Agreement, which requires that an advance notice of five (5) working days be given before such positions are abolished.

The Carrier failed and refuses to reimburse the claimant for the loss of five days' earnings suffered as a result of its failure to give the required advance notice.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: On August 30, 1962, Carrier issued the following bulletin:

flagmen positions advertised in Bulletin No. 9, yet because, as explained previously, it was contemplated that the work involved would entirely constitute flagman work, claimant Blume was, on September 12, 1962, awarded one of the flagmen positions.

Shovel No. 89, in connection with which claimant Blume was assigned to perform flagman work, broke down at approximately 10:00 A.M. on November 5, 1962 because of failure of the swing mechanism, thereby rendering the shovel useless and creating a situation whereby the flagman work which claimant Blume was performing no longer existed and could not be performed. When it was determined, at approximately Noon on November 6, 1962, that temporary repairs to Shovel 89 could not be made, claimant Blume was, of necessity, notified that his position of flagman was abolished effective with the close of his assignment on November 6, 1962.

Attached hereto as Carrier's Exhibits are copies of the following letters:

Carrier's Exhibit A — Copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. J. G. James, General Chairman, under date of April 3, 1963.

Carrier's Exhibit B — Copy of letter written by Mr. Amour to Mr. James under date of April 30, 1963.

Carrier's Exhibit C — Copy of letter written by Mr. Amour to Mr. James under date of May 23, 1963.

Carrier's Exhibit D — Copy of Dr. Householder's letter to Superintendent A. C. Novak under date of April 1, 1963.

Carrier's Exhibit E — Copy of Claimant Blume's letter to Dr. Householder under date of April 6, 1963.

Carrier's Exhibit F — Copy of Dr. Householder's letter to Claimant Blume under date of April 15, 1963.

Carrier's Exhibit G — Copy of Dr. Householder's letter to Superintendent Novak under date of April 15, 1963.

Carrier's Exhibit H — Copy of Superintendent Novak's letter to Claimant Blume under date of April 17, 1963.

(Exhibits not reproduced.)

OPINION OF BOARD: It is a fact that the Carrier notified this Claimant on the afternoon of November 6, 1962 that his job would be abolished at the close of work on that day.

Article III of the June 5, 1962 Agreement requires that not less than five (5) working days' advance notice shall be given before a position can be abolished. It is clear Carrier's action violated the agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of March 1967.