

Award No. 16114
Docket No. MW-16716

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CENTRAL OF GEORGIA RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement and established practices thereunder when it abolished the positions of Foreman J. D. Harris and Apprentice Foreman A. J. Carroll 'other than at the end of the month' (October 1964) and failed and refused to compensate them at the respective monthly rates of pay throughout the month of October. (Carrier's Files MW-3144 and MW-3142)

(2) (a) Foreman J. D. Harris and/or any employe he may have affected through the exercise of his seniority will be paid the difference between the rate of pay of his regular assignment as of September 30, 1964 and what he earned in a lower pay-rated classification for the month of October, 1964.

(b) Apprentice Foreman A. J. Carroll and/or any employe he may have affected through exercise of his seniority be paid the difference between the rate of pay of his regular assignment as of October 2, 1964 and what he earned in a lower pay-rated classification for the month of October 1964.

(3) The Carrier further violated the effective Agreement and established practices thereunder when it abolished certain other monthly-rated positions "other than at the end of the month" (December, 1964) and failed and refused to compensate those affected thereby at their respective monthly rates of pay throughout the month of December, 1964. (Carrier's Files MW-3146, MW-3147, MW-3150 and MW-3152).

(4) Each employe hereinafter named and/or any employe affected through the exercise of his seniority be paid the difference between the rate of pay of their regular assignment as of November 30, 1964 and what they earned in a lower pay-rated classification for the month of December, 1964.

CARRIER'S FILE MW-3147

Railwelder
Assistant Railwelder

W. L. Poythress, Jr.
M. W. Walden, Jr.

Machine Operator	H. R. Scruggs
Division Carpenter	H. Landing
Foreman	W. C. Simmerson
Foreman	R. B. Collins
Foreman	J. T. Gordy
Foreman	C. A. Adamson
Apprentice Foreman	W. H. Blackburn
Assistant Foreman	R. L. Smallwood
Machine Operator	J. Collins
Machine Operator	R. C. Taylor
Machine Operator	J. H. Vaughn
Machine Operator	I. Carr, Jr.
Machine Operator	P. M. Senn
Machine Operator	G. M. Shaw
Machine Operator	M. J. Carroll
Machine Operator	H. J. Brinson
Machine Operator	G. L. Dickey
Machine Operator	W. A. Murphy
Machine Operator	T. R. Poss
Machine Operator	J. A. Crawford
Machine Operator	R. A. Garner
Machine Operator	C. E. Floyd

CARRIER'S FILE MW-3146

Railwelder	R. L. Prince
Assistant Railwelder	J. D. Dorsey
Railwelder	J. C. Cox
Assistant Railwelder	W. L. Edwards
Division Carpenter	W. B. Wood, Sr.
Machine Operator	A. J. Carroll
Foreman	J. D. Harris
Foreman	J. D. Hayes, Jr.
Assistant Foreman	O. Capps
Machine Operator	E. L. Smith
Machine Operator	H. O. Albritton
Machine Operator	B. N. Callahan
Machine Operator	J. E. King
Machine Operator	E. L. Reynolds
Machine Operator	T. K. Brady
Machine Operator	J. R. Bynum
Machine Operator	J. C. Ammons
Machine Operator	W. P. Calloway
Machine Operator	R. E. Kearbey
Machine Operator	J. A. Greene
Machine Operator	H. C. Trice

CARRIER'S FILE MW-3150

Iron Bridge Foreman	G. L. Saunders
Asst. Iron Bridge Foreman	H. R. Lloyd

CARRIER'S FILE MW-3152

Railwelder	J. R. Wall
Assistant Railwelder	E. M. Walker
Machine Operator	T. I. Macon
Dragline Operator	H. Clark
Division Carpenter	B. C. Oliver
Foreman	L. M. Hall
Foreman	A. E. Pritchett
Foreman	F. B. Lloyd
Foreman	P. A. McAllister
Foreman	F. B. Jackson
Assistant Foreman	J. B. Bozier
Machine Operator	J. M. Pike
Machine Operator	R. Pearson
Machine Operator	G. R. Sewell
Machine Operator	M. D. Bell
Machine Operator	B. G. Youngblood
Machine Operator	J. E. Buchanan
Machine Operator	C. W. Sanders
Machine Operator	W. F. Jackson
Machine Operator	C. E. Taylor
Machine Operator	J. Canady
Machine Operator	J. L. Webb
Machine Operator	W. Patrick
Machine Operator	J. W. Williams
Machine Operator	G. Walton
Machine Operator	J. A. Crittenden
Machine Operator	B. Strickland
Machine Operator	O. Welch
Machine Operator	W. Pendleton
Machine Operator	W. B. Freeman
Machine Operator	L. Russell
Machine Operator	J. Dill

EMPLOYES' STATEMENT OF FACTS: The claimants were all regularly assigned to their respective monthly rated positions at the time said positions were abolished. Their assigned work weeks extended from Monday through Friday (Saturdays and Sundays were rest days).

The rule controlling this dispute (Rule 7-a) provides that not less than five (5) working days' advance notice shall be given before positions are abolished. Nonetheless, the Carrier abolished all of the positions here involved without giving the claimants such required advance notice.

CLAIM NO. 6

In accordance with Rule 7, Reduction and/or Increase of Force, of the agreement, Mr. H. L. Rose, Engineer-Maintenance of Way, issued on November 25, 1964, the usual and customary notice of force reduction, stating that effective with the close of work Monday, November 30, 1964, positions were abolished on all extra gangs, section gangs, bolt tightening machine gangs, rail welders and assistants, division carpenter gangs, bulldozer, crane, dragline operators, and T&S Gang No. 1, Columbus Division. This force reduction is the usual and customary procedure for the Holiday Season for time immemorial. In not counting the date of the letter notice, November 25, this meant that the employees involved only received three days' notice. Therefore, each man involved was paid an additional two days' pay of 8 hours each at his last straight time rate of pay in lieu of five days' notice.

The correspondence concerning this claim covered by Carrier's File MW-3152 is hereto attached marked Carrier's Exhibits 6-A through 6-I.

* * * * *

The claimants in each of these six claims either exercised seniority over employees junior to them in the service, and thus continued working on jobs paying as much or more in some cases and less in other cases; some elected to take their annual vacations and were paid in October or December, as the case may be, for all vacation earned in the previous calendar year; some who could have continued working elected to become furloughed and draw unemployment compensation from the Railroad Retirement Board; a few were recalled to work due to emergencies which occurred; and, a few did not have sufficient seniority to continue work by the exercise of seniority. In any event, the force reduction was of short duration. Those jobs abolished effective November 30, 1964, were re-established in January, 1965, for example.

The Brotherhood has failed in all handlings of these six separate and distinct claims on the property to cite a rule, interpretation or practice which gives them what they demanded in the claims handled on the property. As a matter of fact, there is nothing in the agreement to support the new or conglomeration of amended claims appealed to your Board for adjudication. The claims have no semblance of merit.

The rules and working conditions agreement between the carrier and its employees represented by the Brotherhood of Maintenance of Way Employees is effective September 1, 1949, as amended. Copies are on file with your Board and the agreement, as amended, is hereby made a part of this dispute as though reproduced herein word for word.

(Exhibits not reproduced.)

OPINION OF BOARD: A review of this record reveals that six claims were initiated and handled up to and including the highest officer of the Carrier designated to handle such disputes. Upon presentation to this Board, these six claims were combined, and it is because of this that Carrier contends the claim before us has been amended to such an extent that it constitutes a substantial variance from those which were processed on the property. Carrier therefore argues that the instant claim should be dismissed.

The original six claims have been combined and submitted to this Board in different language and in a different format. The claim, as we now have it, has not been enlarged, but has been lessened in certain respects. In our judgment, the changes made are not sufficiently substantial to warrant us to dismiss the claim. We disagree with Carrier's position on this procedural ground, and in recognition of this, we will proceed to a consideration of the substantive issues presented.

The employees aver that Carrier did not give them five (5) working days' notice when a Reduction in Force notice was issued, as contemplated by paragraph (a) of Rule 7-Reduction and/or Increase of Force, and revised by Article III of the National Agreement dated June 5, 1962. We agree with the Employees on this point, and Carrier, as evidenced by the record, has admitted their error and have compensated the employees accordingly. However, by complying with the five (5) days' notice, Employees have been extended into the following month. The effective date of the reduction, rather than being in September, as in the first instance, is in October. The Employees contend that Carrier has violated paragraph (a) of Rule 7, the pertinent portion of which reads:

"In the event abolishment or consolidation is made other than at the end of the month, regularly assigned monthly rated employees will be compensated to the end of the month in which abolishment or consolidation occurs."

We agree with the contentions and arguments of the Employees. The above cited language is clear, precise and unambiguous. We will accordingly sustain the claim as presented.

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 Employees involved in this dispute are respectively Carrier and Employees 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 1st day of March 1968.

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