Award No. 17219

Docket No. CL-17814

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6467) that:

1. Carrier violated the Clerks' Agreement, when, effective at quitting time, 4 P.M., May 26, 1967, it abolished C. W. Stone's Yard Clerk position at Atchison, Kansas, pursuant to notice given Clerk Stone at 11 A.M. on Monday, May 22, 1967, which was not a "five working days advance notice" as required by Rule 14(b) of the Clerks' Agreement.

2. Carrier shall be required to compensate Clerk C. W. Stone for eight hours at the pro rata Yard Clerk rate, amount $22.91.

EMPLOYES' STATEMENT OF FACTS: Atchison, Kansas, is approximately 50 miles northwest of Kansas City, Missouri, and is located on the Carrier's operating Division known as the Omaha, Division.

On and prior to May 22, 1967, the Carrier maintained a yard clerical force as follows:

UPPER YARD Position	Assigned Hours	Meal Period	No. Days Per Week	Rest Days
Chief Yard Clerk	7:00 AM-3:00 PM	20 Min.	7	Sun. & Mon.
Yard Clerk (Claimant's position)	7:00 AM-4:00 PM	1P.M.-2P.M.	5	Sat. & Sun.
Yard Clerk	3:00 PM-11:00 PM	20 Min.	7	Thurs. & Fri.
	11:00 PM-7:00 AM	20 Min.	7	Tues. & Wed.

at the straight time rate of pay for one day, when it is alleged claimant was not given five working days' advance notice when his position of Yard Clerk at Atchison was abolished:

As we understand the matter, Carrier issued abolishment notice dated May 22, 1967, addressed to Clerk C. W. Stone reading as follows:

> 'Effective with your quitting time 4:00 P.M. Friday May 26, 1967, position of Yard Clerk now held by you, assigned to work 7:00 A.M. to 4 P.M., 5 days per week, with rest days of Saturday and Sunday, rate $22.91 per day, will be abolished.'

The above abolishment notice was delivered to the claimant at 11:00 A.M. on May 22, 1967.

As you know, it has been the practice on this property, and with your concurrence, for many years that when an abolishment notice is received by the employe affected prior to 'noon' of the first day that date would count for the purpose of arriving at the total number of days advance notice given.

Inasmuch as claimant received five days' advance notice, this claim is respectfully declined."

OPINION OF BOARD: Claimant, the occupant of a yard clerk position, was assigned to work 7:00 A.M. to 4:00 P.M., Monday through Friday, and Saturday and Sunday as rest days. On May 22, 1967, Monday, at 11:00 A.M. Carrier notified Claimant that effective 4:00 P.M. Friday, May 26, 1967 his position would be abolished.

We are dealing here with Rule 14(b) of the Agreement which provides that "the occupant thereof will be given a minimum of five working days advance notice in writing . . .", and the question to be determined herein is whether Monday May 22, 1967 is to be counted as one of said five working days. Claimant contends that said rule requires a minimum of five working days' notice and that his working day commences at 7:00 A.M. Carrier argues that it has been the past practice to include the day the notice is served provided said notice is given prior to noon of said working day.

Carrier failed to adduce any proof as to past practice, however, said Rule 14(b) is clear and unambiguous as to said minimum notice time period. It explicitly provides for a **minimum** of five working days' advance notice in writing and a past practice of less notice time period could be contrary to said rule. Further, we do not agree with Carrier's argument that the working day, during which Claimant received said notice in this instance, must be included in computing said "five" working days advance notice. See Award 15839 and 15954.

Therefore, we find that Claimant was not given five working days' advance notice as required by said Rule 14(b) and the claim for a day's pay must be sustained.

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 18th day of June 1969.

Central Publishing Co., Indianapolis, Ind. 46206 Printed in U.S.A.