

Award No. 19033
Docket No. MW-19366

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
NORFOLK SOUTHERN RAILWAY COMPANY

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

(1) *The Carrier violated the Agreement when it laid off Machine Operator G. Z. Keith and Oiler R. Wallace on September 19, 1969 with less than five (5) working days' advance notice (System File C-1 (NS) G. Z. Keith - Ray Wallace).*

(2-a) *Machine Operator G. Z. Keith be allowed sixteen (16) hours' pay at his regular straight time rate and subsistence allowance for September 22 and 23, 1969, because of the violation referred to in Part (1) hereof.*

(2-b) *Oiler R. Wallace be allowed twenty-four (24) hours' pay at his regular straight time rate and subsistence allowance for September 19, 20, 21, 22 and 23, 1969, because of the violation referred to in Part (1) hereof.*

EMPLOYEES' STATEMENT OF FACTS: Dragline Operator G. Z. Keith was regularly assigned to operate a unit of equipment hereinafter referred to as the SHIELD BANTAM CRANE. Roadway Machine Oiler R. Wallace was regularly assigned to the same unit of equipment as Oiler and/or helper. Their regular work week extended from Monday through Friday.

The Shield Bantam Crane became inoperative on September 15, 1969 and remained so until repairs were completed on October 10, 1969.

Dragline Operator G. Z. Keith was given permission to take two (2) days of vacation (September 16 and 17, 1969) and to voluntarily absent himself from work on September 18, and 19, 1969. Roadway Machine Oiler R. Wallace performed other work not related to the operation of the Shield Bantam Crane on September 16, 17 and 18, 1969.

The Carrier notified the claimants on September 18, 1969 that their positions would be abolished effective September 19, 1969. When their positions were abolished, the Carrier was required to give them five (5) working days' advance notice under the provisions of Section (A) of Article 26 which reads:

CARRIER'S STATEMENT OF FACTS: Mr. G. Z. Keith and Mr. R. Wallace were the operator and oiler, respectively, of a Shields Bantam "Rail-roader" Crane that suffered a major mechanical breakdown on September 15, 1969. Due to the difficulty of acquiring parts, the machine remained inoperative until October 10, 1969.

This crane is worked in conjunction with a three-way hy-rail dump truck. The interdependency of these two pieces of equipment makes either machine useless without the other. In addition, this Carrier does not possess any other equipment of this class.

Mr. Keith realized that it would require a minimum of several days to make the necessary repairs and requested that he be given his vacation on September 16, 17 and 18, 1969, and asked to be relieved of duty on September 19, 1971. The Carrier granted Mr. Keith's request and used Mr. Wallace on various and sundry assignments for the balance of the week so that he would be able to protect his income. By September 18, 1969, the Carrier was aware of the extensive delay that would be realized before the crane would be operative. Therefore, on Thursday, September 18, 1969, the Carrier issued a notice of force reduction to the claimants. Temporary work was found for Mr. Keith and Mr. Wallace on September 24, 1969, and they were worked on this basis until the machinery was repaired.

OPINION OF BOARD: The issue involved is whether Carrier was obligated to give five days' advance notice to claimants of the abolishment of their positions.

Based upon the record before the Board, it is our conclusion that the Carrier was obligated to give the claimants five days advance notice. We cannot construe the breakdown of the one crane involved as constituting an emergency condition as contended by the Carrier to permit abolishment of the positions on sixteen hours' advance notice. The claim will 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 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1972.

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