NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25852

THIRD DIVISION

Docket Number MW-25665

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Detroit, Toledo and Ironton Railroad Company

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

(1) The Carrier violated the Agreement when it laid off Messrs. R. B. Keefer, W. Compher, M. C. Hiegel, S. K. Pollock, J. E. Wallace, Jr., C. Ruby, M. L. Cook, H. C. Higgins, W. D. Rayle, K. Johnson, L. Van Gunten, J. L. Moore, M. Wineburger, S. A. Lambert, D. C. Lambert, J. McGinnis, C. V. Hazey, G. A. Ritchie, A. L. Powell, T. Richardson, E. Schaffer, D. Culverson, D. H. Hurston, R. C. McFann, L. A. Floyd. R. Brady, K. L. Seedorf, S. Wilson, K. Payne, R. Strickler, R. D. Lantz, D. Brown, R. Warer and C. B. Grube on July 1, 1982 without benefit of five (5) days' advance notice (Carrier's File 8365-1-146).

(2) The claimants shall each be allowed forty (40) hours of pay at their respective straight time rates because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: The Claimants, who were employed as Trackmen to System Extra Gang "A", contend that they were not given the required five (5) working days advance notice, prior to the time that their positions were to be abolished, effective with the close of day, July 1, 1982.

The Carrier asserts that one group of men from the Extra Gang was notified on the morning of June 24, 1982, and the balance of the Extra Gang on the following Monday morning that their positions would be abolished July 1, 1982. Accordingly, it contends that suitable notice was provided pursuant to the controlling Rule. Moreover, it points out that a confirmation bulletin notice was properly made under date of June 25, 1982.

Sixteen (16) of the Claimants have entered statements which contend that the Foreman did not tell them until July 1, 1982 of the force reduction to be effective that day. The record does not show a denial of these assertions by the Carrier. Accordingly, and based only on the facts of this record, the Board finds that the sixteen Claimants who entered signed statements are each entitled to four (4) days pay at the straight time rate.

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.

A W A R D

Claim is sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1986.

LABOR MEMBER CONCURRENCE
AND
DISSENT
TO
AWARD 25852 - DOCKET MW-25665
(Referee Muessig)

The Board was correct in determining that the Carrier violated Rule 13(a) of the effective Agreement. However, the remedy provided here is not consistent with past awards of this Board.

Rule 13(a) stipulates that when forces are to be reduced or abolished, employes affected will be notified not less than five (5) working days previous to the starting time on the day on which the changes become effective. In this case, it is not disputed that the claimants' positions were abolished effective at 5:00 P.M. on July 1, 1982. After reviewing the record, the Board determined that sixteen (16) of the claimants were not notified that their positions were to be abolished until the actual date of abolishment, i.e., on July 1, 1982. It is clear that the claimants were not notified even one (1) day previous to the abolishment of their positions, much less five (5) days as stipulated in the rule.

Hence, the decision to consider the July 1, 1982 noticed as one (1) day of previous notice was obviously in conflict with the clear language of Rule 13(a) and the precedent established by Third Division Awards 14928, 15839, 15954, 17219 and 21766. Typical thereof is Award 21766 which held:

"At 11:00 a.m. on Friday, May 9, 1975, the Carrier

posted Bulletin No. 511 which advised that Claimant's position (Keypunch Verify #143) would be abolished after working hours on Thursday, May 15, 1975. Claimant's assigned hours were 7:00 a.m. to 3:00 p.m.

Claimant asserts that Carrier did not give a full five (5) working day notice as required by the pertinent agreement.

Carrier concedes that `five working days notice must be given,' but it contends that Friday, May 9, 1975 was one of those days. In other words, it asserts that the working day during which notice was given is properly included in computing the five (5) working days advance notice.

The Board has consistently ruled to the contrary. See, for example, Awards 14928, 15839, 15954 and 17219."

In view of the finding of this Award, which is in conflict with the Agreement language and well reasoned precedent, I must dissent to the remedy provided in this Award.

D. D. Bartholomay
Labor Member