

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26495

Docket Number MW-26273

Herbert L. Marx, Jr., Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway Company (Northern Region)

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

1. The Carrier violated the Agreement when it failed and refused to compensate Messrs. J. Kylik, E. Brink and W. Barnes for wage loss suffered on November 21 and 22, 1983, during which time they were improperly displaced from their assignment on the curve patch force (System File C-TC-2108/MG-4438).

2. Because of the aforesaid violation, Messrs. J. Kylik, E. Brink and W. Barnes shall each be allowed sixteen (16) hours of pay at their respective straight time **rates.**"

OPINION OF BOARD: The Claimants herein were displaced by three senior employees immediately following November 18, 1983. The three senior employees were members of AFE Force 1152. The Organization asserts that these three senior employees were given only three days' notice of the termination of their work on Force 1152, instead of the five days' notice required by Rule 8-1/2(b), which reads as follows:

"RULE 8 1/2

REARRANGEMENT OF TERRITORIES, ABOLISHMENT
OF GANGS, OR FORCE REDUCTIONS

(b) Gangs will not be laid off for short periods except for emergency conditions provided for in Section (c), but when reduction in force is made or when reduction in expense is necessary it will be accomplished by laying off the junior employees. This is not intended to prevent the management from laying off or abolishing extra gangs or seasonal forces, which may be used or discontinued as necessity requires. In making force reduction, not less than five (5) working days' advance notice shall be given to those regularly assigned employees affected, except as provided by Section (c) of this rule."

Because of the alleged short notice, it is argued that the three Claimants were displaced two days early and were improperly deprived of pay for these days.

The Carrier takes the position that members of Force 1152 were aware from the outset that their assignment was of four weeks' duration; that they had full knowledge of this during the course of their work and held discussions concerning the cut off with the Supervisor; and that they were simply "reminded" on November 16, 1983 of the November 18, 1983 date. Thus, the Carrier contends that the members of Force 1152 had full knowledge of the assignment termination for more than the required five days.

There is here an obvious factual conflict, which the Board is not in a position to resolve. The record strongly indicates, however, no probative denial of the Carrier's position that the Force 1152 employees were on notice throughout their assignment as to the termination date. Contrariwise, there is little support of the contention that notice was initially given November 16, 1983. In this position, there is insufficient support for the Claim.

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

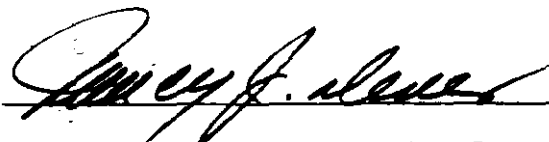
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago., Illinois; this 9th day of September 1987.