

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27016
Docket No. MW-26750
88-3-85-3-504

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Oklahoma, Kansas and Texas Railroad 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 K. S. Mowat without benefit of five (5) working days' advance notice (System File OKT-P-797/2579-OKT).

(2) Claimant K. S. Mowat shall be allowed forty (40) hours of pay at the machine operator's straight time rate because of the violation referred to in Part (1) hereof."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

There is no dispute that the Claimant received written notice on Monday, January 9, 1984, of her furlough owing to force reduction at the end of the same day. The Carrier contends that the Claimant was also given oral notice on Tuesday, January 3, 1984, of her forthcoming furlough on January 9. There is no serious contention that she did not receive such oral notice, which the Carrier states was given at the beginning of the work day.

The Claimant was scheduled to work Monday through Friday, with Saturday and Sunday as rest days.

Required advance notice of furlough is covered in Article III of the June 5, 1962 National Agreement which states in pertinent part as follows:

"ARTICLE III - ADVANCE NOTICE REQUIREMENTS

Effective July 16, 1962, existing rules providing that advance notice of less than five (5) working days be given before the abolishment of a position or reduction in force are hereby revised so as to require not less than five (5) working days' advance notice."

The Organization argues that written notice is required and that the Claimant is therefore entitled to five days' pay in lieu of such written notice. Examination of the applicable Rule shows no requirement as to the form of notice (although notice in writing can obviously forestall later dispute as to timeliness). Thus, the absence of advance written notice does not, in the Board's view, entitle the Claimant to the claimed five days' pay.

However, the requirement of "not less" than five working days' advance notice must logically be read to exclude the day on which notice is given (although it does include, with equal logic, the last day worked). This view is supported by Third Division Award 21766, citing previous Awards to the same effect.

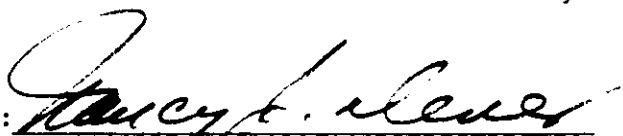
Thus, the Board finds that the notice given on Tuesday, January 3 for a furlough to be effective at the end of work on January 9 constituted only four working days' notice. The Claimant is thus entitled to one day's pay for failure of the Carrier to comply fully with the Rule.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1988.