

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Denver and Rio Grande Western Railroad Company

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

(1) The Carrier violated the Agreement when it laid off the members of Extra Gangs 6501 and 6507 (listed below) without benefit of five (5) work days' advance notice (System File D-3-85/MW-11-85).

Gang 6501:

Samora, F.	Sanchez, A. L.
Findbiner, J. D.	Sanchez, R. G.
Lopez, J. E.	Zoto, C.
Martinez, J. R.	Diaz, S. S.
Saldivar, I.	Mendoza, T.
Torrez, A. M.	Morneo, L. B.
Zuniga, A.	Arizqueta, A.
Tamayo, M. Jr.	Gallegos, J. E.
Arambulo, J. I.	Valdez, Jr., R. J.
Cano, D.	Archuleta, Jr., M. E.
Carrillo, S. D.	Barriga, G.
Diaz, B. S.	Martinez, T. L.
Diaz, T.	Torrez, J. M.
Ramirez, J.	Hesli, D. J.

Gang 6507

Orenday, T.	Buchanan, R. A.
Arreola, J. S.	Garcia, J. R.
Loya, H. P.	Kenick, Jr., M. T.
Molina, A.	Lovato, E.
Sanchez, M. S.	Luevano, J. P.
Sarinana, F.	Salazar, R. G.
Suke, F. K.	Canales, D.
Prieto, F.	Sisneros, D. R.
Prieto, S.	Mason, E. D.
Barriga, A.	Picco, D. J.

(2) Because of the aforesaid violation, Messrs. T. Orenday, E. Lovato and J. Ramirez shall be allowed forty (40) hours of pay at their respective straight time rates and all of the other claimants shall each be allowed sixteen (16) hours of pay at their respective straight time rates."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

On November 27, 1984, Carrier layed off all employees in Extra Gangs 6501 and 6507. At issue here is whether Claimants received five working days' notice (as required by Rule 12) of the impending layoff. If they did, the case is denied. If they did not, some compensation may be due some of the Claimants.

In its review of this case, the Board is persuaded that the following chronology of events has taken place:

- "1. On Monday, November 12, 1983, verbal notice of the layoff was given.
2. On November 19, 1984 verbal notice and written notice of the layoff was given. The notice was posted at 7:30 AM on November 19, before the start of the work day. The layoff notice excluded three people.
3. On Tuesday, November 27, 1984, all employees in both gangs were layed off."

This Board has concluded from this review that Carrier made every attempt possible to fulfill the five-day notice requirement. The employees were made fully aware that a layoff was in the offing on November 12, 1984. A notice was posted on the bulletin board and verbal notice was again given on Monday, November 19, at 7:30 AM, before the work day began. This Board is of the opinion that November 19, 1984, can appropriately be considered the first day of notice, since the work day had not begun when the notice was posted and the information it contained was relayed to the gangs. If November 19, 1984, is considered day one of the notice, then November 27 is appropriate day five and proper notice was given.

As to the separate part of this claim involving the Foreman and two senior men who were excluded from the layoff notice, there is evidence that they all worked beyond the November 27, 1984 deadline.

The Board, on the whole record, has concluded that Carrier did not violate the Agreement and the claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deves - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.