

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

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10149) that:

1. Carrier violated the N&W Protective Agreement dated March 21, 1966, as adopted on the Delaware and Hudson Railway Company when on July 1, 1981 it abolished the Agent's position at Bainbridge, New York without the proper ninety (90) day notice provided for therein.

2. Carrier shall now be required to compensate Ms. Deborah O. Cross one day's pay for each and every day that she is furloughed effective August 1, 1981, and continuing for each and every work day thereafter as long as the violation continues or is permitted to exist.

3. Carrier shall further be required to compensate Claimant Deborah O. Cross interest in the amount of 18 per cent compounded annually on the anniversary date of this claim for all monies due in Item 2 supra."

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.

The Claim of the Organization is that the Carrier has violated the N&W Protective Agreement. That violation resulted in the furlough of Claimant, caused by an alleged position abolishment without proper notice.

During the progression of this Claim on the property the Organization pointed to sections of the aforementioned Agreement wherein a ninety (90) day notice was necessary. The Organization maintained that absent such notification, Claimant was due compensation.

On the property, the Carrier argued that a decline in business made such notification unnecessary and provided supportive statistics. The Carrier also maintained that Claimant was not protected under the N&W Protective Agreement, as her seniority date was October 6, 1969.

It has long been held by this Board that the weight of the evidence for any Claim is the responsibility of the moving party (Third Division Award 24965). The burden of proof cannot be met by assertion. After a thorough review of all issues raised by the parties on the property and ex parte, the Board finds that the burden of proof has not been met. The Claim must therefore fail.

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 13th day of April 1989.