

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

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10151) that:

1. Carrier violated the N&W Protective Agreement dated March 21, 1966 as adopted on the Delaware and Hudson Railway Company, when on November 1, 1981, at 0001 hours, it arbitrarily and capriciously abolished the Position of Telegrapher-Towerman, Position No. 2359-0759, at Hudson, Pennsylvania without giving the required five (5) day notice as provided in the Agreement.

2. As a result of such arbitrary and capricious action on the part of the Carrier, it shall now be required to compensate Mr. N. Andzulis for one day's pay at the pro rata rate for the following dates, November 1, 4, 5, 6, 7, 8, 11, 12, 13 and 14, 1981.

3. Carrier shall further be required to compensate Claimant N. Andzulis interest in the amount of 18 per cent compounded annually on the anniversary date of this claim for all amounts 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 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.

By notice of July 20, 1981, Claimant was notified of the abolishment of his Telegrapher/Towerman position effective November 1, 1981. When abolished, the Organization filed Claim alleging Carrier failure to give the required five (5) day advance notice as per Section Five (5), Paragraph (f) of the July 1, 1968 (N&W) Agreement.

The Carrier denied any Agreement violation. It argued that there had been a severe decline in business and it had followed the Agreement. Section 2(b) required advance notice of force reduction and such notice had been given. It denied that an additional five day advance notice on top of the July 20, 1981, notice was required.

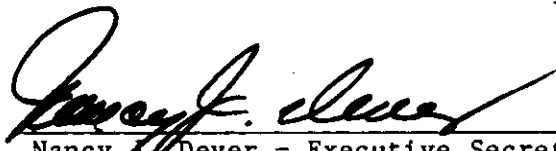
In this contract interpretation case the Board has searched the record on the property for argument and evidence necessary to support the Organization's interpretation. It has long been held that the weight of the evidence for any claim is the responsibility of the moving party (Third Division Award 24965). There is no evidence in the record to support the Organization's interpretation of the Agreement. The burden of proof cannot be met by assertion. After a thorough review of all issues raised by the parties on the property and in their ex parte Submissions, the Board finds that the Claim must be denied. The Organization has failed to meet its burden of proof.

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.