

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28342
Docket No. MW-27516
90-3-86-3-775

The Third Division consisted of the regular members and in addition Referee John C. Fletcher 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 Section Laborer T. L. Copenhaver without benefit of a proper five (5) work day advance notice (System File D-41-85/MW-1-86).

(2) The claimant shall be allowed forty (40) hours of pay at the section laborer'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 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.

Claimant, a furloughed trackman, was mailed, on May 14, 1985, a notice recalling him to work on Carrier's Glenwood Section Gang. He reported for duty ten days later, May 24, 1985. At that time the position for which he had been recalled was occupied by a senior employee. Claimant immediately displaced a junior employee on the Rifle Section Gang and worked the job until he was displaced, on May 31, 1985, by a more senior employee returning from a temporary vacancy. Claimant did not work again until June 10, 1985, when he was able to displace a junior employee on the Shoshone Section Gang.

The Claim before this Board seeks five days pay because Claimant was not given a written notice of force reduction after the May 14, 1985 recall. The Organization contends that this is required by its Agreement because Claimant was the victim of a displacement caused by a force reduction or an abolishment. It contends that when Claimant went to work on the Rifle Section he was told orally by the Roadmaster that he would be cut off in a force reduction after five days. This notice, though, was never confirmed in writing.

The Carrier contends that Claimant was not caught up in a force reduction but was the victim of displacements by senior employees returning from temporary assignments, which do not require five days written notice.

The first sentence of the first paragraph of Rule 12(a) of the Agreement provides:

"Force reduction shall not be made nor will positions be abolished until the employees affected have been given at least five (5) working days advance notice."

The Rule sets out two situations which require five days notice to employees affected - force reductions and abolishment of positions. In this matter the facts demonstrate that a force reduction occurred. The job which Claimant worked on the Rifle Section, starting May 24, 1985, was a vacancy resulting from an employee being assigned to a higher rated temporary position picking up second hand ties on the District. Forces were in fact increased by this temporary assignment. When the assignment was completed forces were reduced.

Claimant was orally told that he would be furloughed. However, this oral notice was not confirmed in writing as required by the second paragraph of Rule 12(a) reading:

"Notice of force reduction if given orally will be promptly confirmed in writing. When such notice applies to two (2) or more employees in a gang it may be posted at the headquarters where bulletin boards are maintained for such purposes."

Claimant was affected by a force reduction. While he was given oral notice of the force reduction this oral notice was not confirmed in writing. In these circumstances the Agreement was violated.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1990.