

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28545
Docket No. MW-27382
90-3-86-3-609

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier violated the Agreement when it laid off Foreman K. S. Mouser without benefit of five (5) work days' advance notice (System File 120-3-8510/11-960-60-40).

(2) Claimant K. S. Mouser shall be allowed forty (40) hours of pay at his 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.

The Claimant was regularly assigned to the position of Foreman of Extra Gang 60 headquartered at Kiowa, Kansas, on the Carrier's Plains Division at the time of the events giving rise to this dispute. He worked Monday through Friday each week with Saturday and Sunday designated as rest days.

According to Claimant's statement, on Thursday, April 4, 1985, he was notified by telephone that his position would be abolished at the close of business that day. Claimant was not advised in writing that his job was abolished, and Carrier does not dispute these operative facts.

Inasmuch as Claimant's seniority as Foreman did not permit him to work on the Old Plains Division Seniority District, he displaced the regularly assigned occupant of the Foreman's position in Extra Gang 57, effective Monday, April 8, 1985.

The Organization contends that Claimant was entitled to five (5) working days' advance notice, in writing, prior to the force reduction in accordance with Rule 3(a), which states:

"3 - (a) - Notice of Force Reduction. Except as provided in Rule 3 - (b), when regularly established positions are abolished, not less than five (5) working days' advance notice, in writing, will be given to the employee(s) occupying such position(s). Notices of position abolishments, if given orally, shall be promptly confirmed in writing."

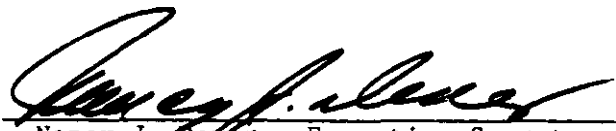
We agree that Claimant did not receive the requisite advance notice required under Rule 3(a). However, there is no evidence that Claimant suffered lost earnings as a result thereof. He was advised on Thursday, April 4, 1985, that he would have to exercise his seniority. Claimant was off Friday (holiday), Saturday and Sunday (rest days) and began work as Foreman in Gang 57 on Monday, April 8, 1985. While we do not condone the Carrier's apparent lapse in this particular matter, the fact remains that Claimant lost no earnings. The Claim, therefore, is a request for additional pay over and above that paid to and received by the Claimant. This Board is not authorized or empowered to award a penalty payment not provided for in Rule 3(a). As this Board has previously concluded in numerous Awards, a penalty cannot be assessed in the absence of specific language imposing such a penalty. Third Division Awards 19750, 14853, 12824, 3651, 13958, 13154, 14994. We must rule, therefore, to deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Defer - Executive Secretary

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