

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29828
Docket No. MW-29653
93-3-90-3-655

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (former Louisville
(and Nashville Railroad Company)

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

- (1) The Carrier violated the Agreement when it failed to furnish Messrs. S. L. Johnson and R. E. Bryant a five (5) day written notice, as prescribed by Rule 21(b), prior to abolishing their positions [System File 16(16)(89)/12 (89-942) LNR].
- (2) As a consequence, Claimants S. L. Johnson and R. E. Bryant shall be paid forty (40) hours' pay at their track repairman's straight time rate."

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 employe 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.

At issue in this case is application and interpretation of Rule 21 - FORCE REDUCTION, which reads, in pertinent part, as follows:

"21(b) Five (5) working days' notice will be given to men affected before the reductions are made, this five (5) working days' notice not to apply when immediate unforeseen reductions are necessary account of inclement weather. It is understood, however, that the five (5) days' notice will be a written notice to each individual involved in a particular force reduction. It will not be necessary, however, to give this five (5) days' notice to track department repairmen if they are serving on temporary vacancies of less than twenty-five (25) working days."

Claimants have each established and hold seniority as Track Repairmen. At the time that this dispute arose, they were regularly assigned as such to Gang 5M10.

The facts and contract language in this case are entirely on point with Award 3 of Public Law Board No. 4604, decided on this property between these parties on February 24, 1989. Thus, the ruling in that Award is controlling in this case. In that case the Board found as follows:

"In this case, Rule 21(b) required that a five day written notice be given to Claimant. In accord with the notice requirements (and in order to keep a record of its compliance with the notification requirements), the Carrier has promulgated a form giving the notice and requiring the affected employee's signature acknowledging receipt of the notice. Here, Claimant contends that he did not receive the written notice. If written notice was given, as asserted by the Carrier, then the signed form by Claimant should have been readily available to the Carrier. That form has not been produced in this record. We must therefore conclude as argued by the Organization that this record sufficiently demonstrates that no written notice was given to Claimant as required by the rule."

Nothing on the record before us persuades this Board that the foregoing Award was erroneous. Accordingly, the Board must sustain the Organization's claim.

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A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.