

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29924
Docket No. MW-29931
93-3-91-3-310

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Consolidated Rail Corporation

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

- (1) The Agreement was violated when the Carrier abolished the positions on Gangs BW 5, 6, 7, 8 and the vehicle operator position assigned as material support effective December 4, 1989 without furnishing four (4) working days' advance notice (System Docket MW-1094.)
- (2) As a consequence of the aforesaid violation, the employes assigned to Gangs BW 5, 6, 7 8 and the vehicle operator support position as of December 4, 1989 shall each be allowed forty (40) hours of pay at their respective straight time rates."

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.

This claim seeks four days pay for a number of employes assigned to Gangs 5, 6, 7 and 8 when their jobs were eliminated without having the advance notice required by Rule 6 of the Agreement. Initially the employes received proper notice that their jobs would be abolished November 16, 1989. However, they

were continued beyond that date and were advised on December 4, that they were done work at the end of the day. Carrier acknowledges that the members of the Gangs involved did not receive the advance notice provided by Rule 6, but indicates that it was not required because they had previously been issued proper abolishment notices and were only extended beyond the date they would have originally been furloughed, because of the availability of special temporary work. It maintains that temporary work of less than thirty days can be assigned without bulletin and that when the temporary assignment is completed notice of abolishment is not necessary under Rule 6.

The Board rejects Carrier's arguments in this matter. The purpose of Rule 6 is to provide employees with advance notice when they will no longer be needed. Carrier gave one notice but did not in fact effect a force reduction under that notice. Instead it continued a number of employees in their assignments beyond that date. This continuation constructively canceled the earlier notice, because it was not made effective. When the actual force reduction occurred, it was necessary to effect the reduction with proper notice under Rule 6. This was not done. The Claim has merit. It will be sustained.

Claimants received one day's notice of abolishment. Rule 6 requires that they receive four day's notice. Claimant's are each entitled to an additional three day's pay. The Claim will be sustained for that amount.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 2nd day of December 1993.