

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30612
Docket No. SG-30762
94-3-92-3-565

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on Consolidated Rail Corporation (Conrail):

Claim on behalf of R. W. Goo, Employee Number 755961, an employee of Seniority District No. 9, that Carrier violated the Agreement, particularly Rule 2-E-1; when it failed to provide a five day notice of the abolishment of his position."

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 employee 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.

On February 6, 1991, Carrier issued a vacancy bulletin for a Maintainer Position at Selkirk Yard. Claimant was recalled from furlough status effective February 11, 1991, and worked the vacancy through February 21, 1991, when a cancellation notice was posted indicating that the vacancy had been advertised in error. The Organization argues that Claimant was entitled to five days notice of force reduction under Rule 2-E-1 (a), reading in part:

"Notice of a force reduction or an abolishment of positions shall be given to the employees occupying the positions as soon as possible and not less than five (5) working days in advance."

Carrier argues that Rule 2-E-1 (a) covers only permanent positions, and that Claimant was occupying the position covered by the vacancy bulletin on a temporary basis, pending assignment, and as such he was not entitled to the five day force reduction notice when relieved of the assignment.

While the Board recognizes that furloughed employees recalled for service are not entitled to five working days advance notice in each and every circumstance of a return to a furlough status, such as in situations where they are displaced by the return of a regular employee, or vacancies that they may be filling on a temporary basis are permanently assigned, such notice is, nonetheless, required when a force reduction or an abolishment occurs, as is the situation in the circumstances involved here. Rule 2-E-1 (a) provides that employees occupying the positions of "a force reduction or an abolishment" will be provided not less than five working days notice. The term "employees" is not qualified as between those that are permanent occupants and those that are temporary occupants. Accordingly, it must include both.

In this matter a force reduction occurred. Even though the job may have been bulletined in error, as argued by Carrier, it existed for ten days and was occupied by Claimant. When it was abolished a force reduction occurred, but the occupant of the position was not given the five (5) working days notice required by the Rule.

The claim has merit. It will be sustained for five days pay.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 2nd day of December 1994.