

**Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33642
Docket No. MW-32635
99-3-95-3-565**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it abolished the positions on SPG Gang 5XT9, effective December 15, 1994, without furnishing five (5) working days' advance notice [System File 21(47) (94)/12(94-1064) CSX].

(2) As a consequence of the aforesaid violation, the employees of SPG Gang 5XT9 shall each be allowed ten (10) hours' straight time pay for December 16, 19, 20, 21 and 22, 1994."

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 were given due notice of hearing thereon.

The Claimants were members of System Production Gang (SPG) 5XT9. They were assigned to work Monday through Thursday, ten hours each day.

On November 10, 1993, the Carrier posted a bulletin of the tentative work schedule for SPG 5XT9. The gang was scheduled to commence work on March 14, 1994 and end on November 11, 1994. However, they did not conclude the production season until December 15, 1994.

The Organization contends that on Thursday, December 15, 1994, the members of SPG 5XT9 were verbally advised that their positions would be abolished effective at the end of that workday. According to the Organization, this was the first indication the gang had that their positions were to be abolished. However, the Carrier insists that all members of the gang were aware that production work would cease on December 15, 1994.

Rule 13 - Force Reduction, of the Agreement between the Organization and the former Seaboard Coast Line Railroad was applicable to SPG 5XT9 in December 1994. Rule 13 provides, in pertinent part, as follows:

"Section 1

Five (5) working days' notice shall be given to employees affected before force reductions are made, with copy of notice to General Chairman, except as provided for in Article VI - EMERGENCY FORCE REDUCTION RULE, February 10, 1971 National Agreement. . . ."

The Organization avers that the members of SPG 5XT9 were not given five working days' notice that their positions were to be abolished. Therefore, they are each entitled to ten hours' pay for December 16, 19, 20, 21 and 22, 1994, in the Organization's opinion.

The Board has previously determined that Rule 13 does not require written notice to the employees affected by a force reduction, but it does require written notification to their General Chairman. (See Third Division Award 32916.) The Carrier insists that the members of SPG 5XT9 were aware that their production gang work would end on December 15, 1994. However, the Carrier never

established exactly when they were given the notice required by Rule 13, Section 1.

Even if the members of SPG 5XT9 were not given five working days' notice that their positions would be abolished as required by Rule 13, Section 1, nevertheless they are not entitled to compensation for December 16, 19, 20, 21 and 22, 1994, because they did not sustain any loss of earnings on these days.

The Board has ruled on several occasions that in order to be entitled to compensation for a violation of advance notice rules similar to Rule 13, Section 1, employees must demonstrate that they lost earnings during the five working days following the date on which they were notified that their positions were to be abolished. (See for example, Third Division Awards 14705, 21691 and 28545.) Because the members of SPG 5XT9 did not lose any earnings on December 16, 19, 20, 21 and 22, 1994, they are not entitled to compensation for these days even if they were not given the notice required by Rule 13, Section 1.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 16th day of November 1999.