

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 34153  
Docket No. SG-33806  
00-3-97-3-300**

**The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.**

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(Wheeling and Lake Erie Railway Company**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Wheeling & Lake Erie Railway Co. (WLE):**

**Claim on behalf of J. C. Miller for payment of 272 hours at the straight time rate, as well as any additional wages lost subsequent to December 12, 1995, account Carrier violated the current Signalmen’s Agreement, particularly Rule 18, when it instructed the Claimant on October 18, 1995, to not return to work, even though the Claimant had not been displaced and had not been provided with a notice of the abolishment of his position. General Chairman’s File No. 951207A. BRS File Case No. 10326-W&LE(M).”**

**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.**

By letter dated December 12, 1995, the Organization filed a claim asserting violation of Rule 18. The Organization maintained that the Claimant was instructed on October 18, 1995 by Roadmaster Brown not to return to work on October 19, 1995 as he was furloughed. As the Claimant was not displaced by a senior employee and received no notification that his position was abolished, the Organization argued that Rule 18, Sections A and D were violated. Rule 18 states in pertinent part:

- “A. Except as otherwise provided herein, when a regular assigned position is to be abolished, the employee occupying the position will be given not less than five (5) working days’ written notice prior to the effective date of the abolition of position. Copy of such notice of abolition of position will be furnished to the General Chairman and all employees in active service on the seniority district involved.
- D. When force is reduced, positions abolished or an employee is displaced by a senior employee the affected employee shall have the right to displace any junior employee, except as provided in paragraph E and F. He must exercise such displacement rights within five (5) working days of date of receipt of notice or he will assume furlough status.”

The Organization’s claim on the property and before the Board is a violation of Rule 18 as the Claimant neither received written notice that his position was abolished, nor was he displaced by a senior employee as required.

There was no response to the Organization’s claim on the property. It was conferenced on October 31, 1996. The only other on-property record is the letter from the Organization dated March 13, 1997 documenting the conference and stating that the Carrier “did not dispute the facts of the claim.”

The Board makes clear that while it fully read the Carrier’s Submission, those arguments were never presented on the property. That includes the Carrier’s argument that the parties agreed to waive procedure and rule on the merits. It is axiomatic that when either party fails to raise an argument while the dispute is on the property, it may not have such new argument later considered before the Board. There is no documented record on the property of the Carrier ever responding to the Organization’s claim or reaching joint agreement to waive procedural issues.

Rule 18 clearly states that employees will be given written notice of abolishment. The on-property record confirms that the Claimant was neither given notice nor displaced by a senior employee. Rule 18 was violated. The claim must be sustained as submitted.

**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 19th day of June, 2000.