

****CORRECTED****

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

**Award No. 35368
Docket No. SG35345
01-3-99-3-213**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Southern Pacific
(Transportation Company)**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company (former Southern Pacific):

Claim on behalf of T.K Dunivin for all time lost including overtime, account Carrier violated the current Signalmen's Agreement, particularly Rules 35 and 68, when it did not provide the required written notice that the Claimant would be furloughed. Carrier's File No. 1107171. General Chairman's File No. SWGC-1694. BRS File Case No. 10922-SP."

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 material facts that led to this claim are not in dispute. On July 15, 1997, the Claimant was displaced from his regularly assigned position as a Signaller in Eugene, Oregon. Pending his assignment to a new, permanent position the Claimant worked temporary positions. On September 12, 1997, he was assigned to the position of Signal Shop Foreman on the Portland Seniority District. On September 12, 1997, this position was abolished. The Claimant was not given five working days' advance written notice that the Signal Shop Foreman's position was going to be abolished.

On November 5, 1997, the Organization tiled a timely claim on behalf of the Claimant. The Organization alleged that the Carrier violated Rule 35(a) by not giving the Claimant live working days' advance notice in writing that the Signal Shop Foreman's position was going to be abolished. The Organization requested that the Claimant be compensated at the Signal Shop Foreman's rate of pay, including any lost overtime work, until the Carrier complied with Rule 35.

The Carrier denied the claim asserting that the Claimant was not entitled to five working days' written notice because he was not permanently assigned to the position that was abolished on September 12, 1997. It is the Carrier's position that Rule 35(a) is inapplicable to employees who do not hold permanently assigned positions. Inasmuch as the Claimant was not the permanent incumbent of the Signal Shop Foreman's position when it was abolished, the Carrier contends that he was not entitled to the written notice set forth in Rule 35(a).

Rule 35 provides as follows:

“REDUCTION IN FORCE

- (a) Except as otherwise provided in paragraphs (c) and(d) below, force reductions shall not be made nor will positions be abolished until the employees affected have been given not less than five (5) working days advance written notice.
- (b) When force is reduced, the senior man in a class on a seniority district shall be retained. When force is reduced in a gang, the position held by the junior employee in the class will be abolished.
- (c) Advance notice shall not be required under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire or

labor dispute other than as covered by paragraph (d) below, provided that such conditions result in suspension of a Carrier's operations in whole or in part. It is understood and agreed that such force reductions will be confined solely to those work locations directly affected by any suspension of operations. It is further understood and agreed that notwithstanding the foregoing, any employee who is affected by an emergency force reduction and reports for work for his position without having been previously notified not to report, shall receive four (4) hours pay at the applicable rate for his position. If an employee works any portion of the day, he will be paid in accordance with existing rules.

- (d) Advance notice shall not be required where a suspension of a Carrier's operations in whole or in part is due to a labor dispute between said Carrier and any of its employees."

On its face, Rule 35 (a) is not limited to employees who are assigned to permanent positions. There are two exceptions in Rule 35 to the five day written notice requirement, namely "emergency conditions" and a "labor dispute." Neither of these exceptions is applicable here. If the parties intended "assignment to temporary positions" also to be excluded from the notice requirements of Rule 35(a) it appears to the Board that they would have included this exclusion in Rule 35 along with "emergency conditions" and a "labor dispute."

The Board agrees with the Carrier that it is illogical to require employees assigned to temporary positions to be given five days' written notice of the abolishment of such positions because these positions may be abolished at any time. Nevertheless, as noted above, there is no exclusion in Rule 35 for employees assigned to temporary positions. Therefore, the notice requirement in Rule 35(a) must also apply to these employees.

The appropriate remedy for the Carrier's violation of Rule 35(a) is to make the Claimant whole for the compensation he would have earned in the Signal Shop Foreman's position for the five working days following September 12, 1997, less the compensation he earned during these five working days.

AWARD

Claim sustained in accordance with the Findings.

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 20th day of March, 2001.