

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 37241  
Docket No. SG-37704  
04-3-03-3-49

The Third Division consisted of the regular members and in addition Referee Nancy F. Eischen when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(CSX Transportation, Inc. (former Baltimore & Ohio  
( Railroad Company)

**STATEMENT OF CLAIM:**

“Claim on behalf of the General committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (CSXT):

Claim on behalf of J. L. Smith, for three days at his Foreman's rate of pay, account Carrier violated the current Signalman's Agreement, particularly Rule 31, when it failed to properly notify the Claimant that his job was abolished five days prior to the abolishment on October 19, 2001. Carrier's File No. 15(02-0055). General Chairman's File No. T1-01-03-02. BRS File Case No. 12402-B&O.”

**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.

This case involves the application of Rule 31 - REDUCTION IN FORCE - specifically, Section (b) which states, "When force is reduced or positions abolished, employees affected will be given not less than five working days' advance notice thereof. . . ." The note appended to this section reads:

"NOTE: Information as to force reduction or abolishment of positions that occurred will be contained in bulletin to be issued by the Signal Supervisor to all employees under his jurisdiction."

In that connection, Section (e) of Rule 31 states that: "An employee exercising displacement rights must do so within ten (10) days from the date actually displaced, or from the date his position was abolished, except that an employee absent on leave, annual vacation, or for physical disability at the time he is displaced or his position is abolished will have ten (10) days after reporting for duty in which to comply with the requirements of this paragraph . . . ."

On October 12, 2001, the Carrier posted notice on the Signalmen's electronic bulletin board that effective with the close of business on Friday, October 19, 2001, Signal Force 7PB6, which included Foreman J. L. Smith (the Claimant) would be abolished. The record demonstrates that on Wednesday, October 24, 2001, the Claimant exercised his seniority rights and displaced to the position of Inspector on Signal Force 7PB6.

In a November 11, 2001 letter, the Local Chairman submitted a claim stating that the Claimant "is entitled to not less than five working days notice as per Rule 31 of the 1951 Agreement." For reasons not clear on this record, the Local Chairman further alleged that:

"Mr. Smith had to take AWP days on the 22nd and 23rd because his job was abolished as of the 19th. The man working the position Mr. Smith bumped was on vacation the 22nd and could not be reached until the 23rd. Mr. Smith started his new position on the 24th."

The claim requested that the Claimant be paid for the time that he took to exercise his seniority after his position was abolished. Specifically, the Organization requested three days' pay at the Foreman's rate for "Saturday, October 20, which was a PIL day, Monday, October 22 and Tuesday, October 23."

The Carrier denied the claim noting that there was no violation of the Agreement because "... my investigation reveals that the abolishment notice (copy attached) was issued on Friday, October 12 at 3:04 p.m. and was effective close of business October 19, 2001. This is certainly within the five days notice."

In an appeal to the Carrier's highest designated officer, the General Chairman continued to assert that the Claimant "was not given the required (5) days notice." The General Chairman went on to note that:

"Mr. Smith was on VACATION, his wife was in the hospital for a very serious operation, neither the National Vacation Agreement or (sic) the (B&O) Agreement require that an employee on VACATION, check in to see what is going on with the Railroad or his position."

In its final denial, the Carrier reiterated that it had complied with Rule 31(b) and that the Claimant had been properly notified of the October 19 abolishment of his position.

The Carrier's payroll records demonstrate that the Claimant worked on Friday, October 12, 2001 and was compensated for his monthly-rated position (Paid In Lieu of monthly rate "PIL") for Saturday, October 13, 2001. The Claimant observed two vacation days on Monday, October 15 and Tuesday, October 16, and then worked his Foreman's position on Wednesday, October 17, Thursday, October 18 and Friday, October 19 at which time the assignment was abolished. The Claimant next worked on Wednesday, October 24, 2001.

According to the Organization, the Claimant did not read the notice until his return from vacation on Wednesday, October 17, and this "delayed discovery" of the abolishment notice prevented Smith from being compensated for Saturday, October 20, Monday, October 22, and Tuesday, October 23.

At the outset, it must be noted that the abolishment notice of the Claimant's position was posted in a timely fashion, and in the customary and usual manner. There is no dispute that the abolishment notice was posted on October 12, 2001 on the Automated Message System (AMS) under the Signal B&O Jobs (SIGBOJOB) to which all signal employees have access. Consequently, the "employees affected" were given "not less than five working days' advance notice" of the pending abolishment as required by Rule 31(b).

Further, the fact that incumbent Smith observed two vacation days during the advanced notice period did not require the Carrier to amend, change or alter its notification procedures with respect to Rule 31(b). In other words, Rule 31(b) does not single out the "incumbent" of the abolished position to be treated any differently with respect to the advanced notification process.

Finally, the Carrier is not obligated to compensate an employee for the time that he is absent from service while he is waiting for his exercise of seniority to take effect. In fact, Rule 31(e) details the time in which previously absent employees may exercise their displacement rights, i.e., ". . . an employee absent on leave, annual vacation or for physical disability at the time he is displaced or his position is abolished will have ten (10) days after reporting for duty in which to comply with the requirements of this paragraph." Under the circumstances, the Organization is improperly seeking payment of compensation on behalf of the Claimant while he was holding displacement from Friday, October 19, until he returned to the position he voluntarily selected on Wednesday, October 24, 2001.

Simply put, this record is void of any evidence that suggests that the Carrier was responsible for directing the Claimant to displace another vacationing employee's position which prevented his return until Wednesday, October 24, 2001. In fact, the Claimant clearly selected to displace to this position knowing that he would not start work until October 23, 2001. Therefore, the claim must be denied.

**AWARD**

Claim denied.

**Form 1**  
**Page 5**

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**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 27th day of October 2004.**