

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37311
Docket No. SG-37799
04-3-03-3-147

The Third Division consisted of the regular members and in addition Referee Nancy Faircloth 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. E. Dunahee, for 16 hours at his Signal Maintainer's rate of pay, account Carrier violated the current Signalman's Agreement, particularly Rule 31, when it failed to notify the Claimant that his job was abolished five days prior to the abolishment effective December 28, 2001. Carrier's File No. 15(02-0071). General Chairman's File No. SLW-01-05-02. BRS File Case No. 12533-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.

The Claimant was assigned to the position of Signal Maintainer on Force No. 7KA6. The Claimant observed vacation during the period of December 15, 2001 to and including January 1, 2002. On Tuesday, December 18, 2001, the Carrier posted notice on the Signalman's electronic bulletin board that effective the close of business, on Friday, December 28, 2001, Signal Force 7KA6, which included the Claimant, would be abolished. There is no dispute that on December 19, 2001, the day following the electronic posting of the abolishment announcement, Signal Supervisor Whitlatch made a courtesy call to the Claimant at home and advised him regarding the pending abolishment of his position.

Thereafter, on January 2, 2002, the Claimant returned from his vacation, and received formal notification of the December 28, 2001 abolishment. The Carrier compensated the Claimant for his time on Wednesday, January 2, 2002, instructed him to finish the necessary reports which were part of his former assignment and return the company truck that had been provided for his former assignment on Force No. 7KA6. On Thursday, January 3, the Claimant exercised his seniority rights and displaced to a Signalman position on Signal Force 7X14, with assigned rest days, Friday, Saturday and Sunday. Therefore, the Claimant did not begin his new assignment with Signal Force 7X14 until Monday, January 7, 2002. The Carrier's payroll records demonstrate that the Claimant "worked" on Wednesday, January 2 and was compensated for same; he was not compensated again until he began his new assignment on January 7, 2002.

By letter dated January 15, 2002, the Local Chairman submitted a claim on behalf of the Claimant asserting that he should be allowed his "Displacement Rights" under Rule 31, for "five working days advance notice" on Gang 7KA6 after returning to work on January 2, 2002. As such, the Local Chairman maintained that the Claimant was entitled to two days' pay for Thursday and Friday, January 3 and 4, 2002.

Under date of March 12, 2002 the Regional Engineer Signals denied the claim, premised upon the following:

"My investigation reveals that Mr. Dunahee contends that he did not receive his five day notice when his Signal Maintainer's position was abolished. Signal Supervisor Whitlatch posted an abolishment notice dated December 18 as you stated in your claim. Mr. Whitlatch also

called Mr. Dunahee at home as a courtesy call to inform him of the abolishment on December 19. Mr. Whitlatch also allowed Mr. Dunahee to work his former position on January 2 as a courtesy to Mr. Dunahee in order that he would have time to place himself on another position and would not lose his holiday pay.

Mr. Dunahee had December 19, 20, 21, 26, 27, 28 and January 2 as notice of the abolishment. This certainly satisfies the five day requirements."

The appeal was discussed during an October 28, 2002 conference, with neither party proffering additional information. Therefore, the issue was placed before the Board for resolution.

In pertinent part, RULE 31 - REDUCTION IN FORCE states:

- "(a) When force is reduced the senior men in a class on a seniority district capable of doing the work will be retained.
- (b) When force is reduced or positions abolished employees affected will be given not less than five working days' advance notice thereof; provided, however, that not more than sixteen (16) hours advance notice is required under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike if the Company's operations are suspended in whole or in part and if because of such emergency the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed. Employees so notified may displace any junior employee in the same or lower classes. Junior employees who are displaced will have the same displacement rights. (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.

- (e) 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 10 days after reporting for duty in which to comply with the requirements of this paragraph. . . .”

Relying upon the language of Rule 31, the Organization asserts in its appeal that the call, by his Supervisor, to Mr. Dunahee on December 19, while he was observing vacation, does not release CSXT of its obligation under the Agreement, specifically, that the employee will be given not less than five working day’s advance notice. The Organization further asserts that “It is not the responsibility or requirement of a Signal employee on VACATION, to make himself aware of posted notices, as stated in Witherspoon’s denial letter.”

For its part, the Carrier summarized its position in a letter dated July 4, 2002 as follows:

“At the outset, the Carrier complied with noted provision of rule 31(b). Proper notice was posted dated December 18, 2001 and in addition the Claimant was personally notified of the job abolishment on December 19 by his supervisor. His supervisor also allowed him to work until January 2, 2002. The Agreement does not require the extra effort put forth by the Carrier in this case. Furthermore, it is the Claimant’s responsibility to stay abreast of all bulletins, awards and abolishments.”

Finally, the Carrier maintained that the Claimant was not entitled to the requested two (2) days’ pay account he “chose to displace to a position that had assigned rest days of Friday, Saturday and Sunday. . . .”

The Claimant began his pre-approved annual (2001) vacation on December 15, 2001 and was not scheduled to return to work until January 2, 2002. In the meantime, on December 18, 2001, three days after the Claimant’s annual vacation commenced, the Carrier abolished his position on Signal Force 7KA6. There is no dispute that on December 19, 2001, the Carrier’s Signal Supervisor telephoned the Claimant to

personally apprise him of the same. Under the terms of Rule 31 (e) the Claimant did not have to interrupt his pre-approved annual vacation to exercise his displacement rights. We need not decide whether the Claimant had any obligation to check the electronic posting of the abolishment of his gang while he was on vacation, because the Carrier's December 19 phone call provided him with the "... five working days notice ..." set forth in Rule 31 of the Agreement.

So far as we can determine from the record, the Claimant was accorded all rights to which he was entitled under Rule 31. This is not changed by the fact that he elected to exercise his displacement rights to a position that had rest days which caused him to be without pay from January 3 to January 6, 2002. In the final analysis, there is no basis for sustaining this claim. See Third Division Award 17938 and Fourth Division Award 3558.

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 21st day of December 2004.