

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40835
Docket No. SG-40752
11-3-NRAB-00003-090008**

The Third Division consisted of the regular members and in addition Referee Lisa Salkovitz Kohn when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Northeast Illinois Regional Commuter Railroad
(Corporation (Metra)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Rail Corp.:

Claim on behalf of M. A. Heiligstedt, for 32 hours pay, account Carrier violated the current Signalmen's Agreement, particularly Rules 31 and 49, when on March 2, 3, 6 and 7, 2006, it failed to provide the Claimant a guaranteed five working days advance notice of a force reduction. Carrier's File No. 11-12-557. General Chairman's File No. 114-RI-06. BRS File Case No. 14086-NIRC.”

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.

At all times relevant to this dispute, the Claimant was the second shift Signal Maintainer assigned to Tower A-20 on the Carrier's Milwaukee District with a scheduled workweek of Monday through Friday. On February 27, 2006, the Carrier abolished a number of positions held by employees senior to the Claimant, providing those employees with five days' notice as required by Rule 31. One of the employees whose position had been abolished exercised his seniority to displace the Claimant from his position. He provided the Claimant with a bump notice dated February 27, 2006, informing him that his last day on the second shift Tower A-20 Signal Maintainer's position would be March 2, 2006, three days later. Signal Supervisor J. Meyer gave the Claimant verbal notification by phone on February 28 that his last workday on the position would be March 1, 2006.

The Organization objected that the Claimant did not receive proper notification of a force reduction in violation of Rules 31 and 49, as well as past practice, and asserts that he is entitled to compensation at the straight time rate, and all associated benefits, for four additional workdays. The Carrier asserted that the claim must be denied because the Claimant's Tower A-20 position was not abolished.

Rule 31 provides, in part:

“REDUCTION IN FORCE: (a)-1 When forces are reduced, seniority will govern. Force reductions shall not be made nor will positions be abolished until employees assigned to and/or holding such positions have been given not less than five (5) working days' advance notice, receipt of which shall be promptly acknowledged to the Division Engineer, copy to the Local Chairman. Copies of such notices shall be furnished the General Chairman and all Local Chairmen. (See Rule 49).

NOTE: Brief telephone advice of position abolished or force reduction shall be considered compliance with this rule. Such advice shall be promptly confirmed in the form prescribed in Rule 49. Employees to whom such telephone advice is sent shall promptly acknowledge receipt by wire to Division Engineer. Such telephone advice of force

reduction or position abolishment shall be sent to the General Chairman, but not to the Local Chairman.”

The Board recognizes the importance of the Carrier’s obligation to give notices required in accordance with the Agreement. This is the message of decisions such as Third Division Award 34153, cited by the Organization in support of the claim. On the other hand, it is the Organization’s burden to identify the Rule that mandates that the Carrier provide the Claimant with additional notice in the situation here.

It is undisputed that the Claimant was not given five working days’ advance notice of any force reduction or position abolition affecting him. However, the Carrier was not required to give the Claimant a Rule 31 notice. Rule 31 states that force reductions cannot be made nor can positions be abolished “until employees assigned to and/or holding such positions” have been given at least five days’ notice, but the Claimant’s position was not abolished, nor was it included in a force reduction. Instead, the Claimant’s Tower A-20 position continued to exist, filled by the senior employee whose position was abolished and who displaced the Claimant. Rule 31 requires notice only in case of a force reduction or abolition of a position. Displacement of the Claimant was a matter of employee movement, not elimination of a position.

The Organization identified nothing in Rule 31 that expands its notice requirement to employees other than an employee whose position is being abolished. To be sure, a force reduction or abolishment of positions may result in the displacement and furlough of one or more junior employees, as happened here, but Rule 31 does not address the notice due to those furloughed employees. As was observed in Third Division Award 10888:

“We are not authorized to read into a Rule, that which is not contained therein, or by an award add to or detract from the clear and unambiguous provisions thereof.”

Instead, Rule 33, “Exercising Displacement Rights,” governs the notice due to an employee being displaced, and that Rule requires the displacing employee, not the Carrier, to give the employee being displaced at least 48 hours advance notice of the

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displacement. The Claimant received that notice, and was not entitled to the five-day notice referred to in Rule 31. Accordingly, the claim is denied.

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 11th day of January 2011.