

****CORRECTED****

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

**Award No. 40906
Docket No. SG-40753
11-3-NRAB-00003-090009**

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 T. J. Alonzo, G. Arrington, C. D. Barkley, M. Davis, J. J. Emsing, K. Ferry, J. C. Hansen, K. P. Lavin, S. D. Maday, L. D. McGee, W. T. Merriweather, R. J. Mezo, M. A. Pedersoli, T. A. Penman, C. E. Purry Sr., B. T. Ruddy, J. J. Senodenos, M. D. Thaxton and M. Torres, for 32 hours pay and all benefits associated with paid compensation, account Carrier violated the current Signalmen’s Agreement, particularly Rules 31 and 49, when on February 28, 2006, through March 3, 2006, it failed to provide the Claimants a guaranteed five working days advance notice of a force reduction. Carrier’s file No. 11-12-556. General Chairman’s File No. 113-RI-06. BRS File Case No. 14087-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 19 Claimants in this dispute were assigned to various positions in the Signal Department. On February 21, 2006, six Claimants (Hansen, Lavin, McGee, Penman, Ruddy and Torres) (referred to as "the Hansen Claimants") were among 25 employees who received notices that the positions that they held would be eliminated at the end of shift on February 27, 2006. On February 24, 2006, a Carrier manager assisted the employees whose positions were to be abolished in exercising their seniority into positions that were still active. The remaining 13 employees (referred to as "the Alonzo Claimants") did not have their positions abolished. Instead, the Alonzo Claimants were displaced through exercise of seniority by senior employees whose positions had been abolished effective February 27, 2006.

The Organization objects that the 19 Claimants did not receive proper notification of a force reduction in violation of Rules 31, 49, and past practice and asserts that they are entitled to compensation, and all associated benefits, for 32 additional hours. The Carrier asserts that the claim must be denied because 1) the Hansen Claimants received the required notices on February 21, 2006, and 2) the Alonzo Claimants, whose positions were not abolished, were not entitled to Rule 31 notices, and received proper notices of their displacement.

Rule 31 — REDUCTION IN FORCE provides, in part:

"(a) 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.”

As noted in Third Division Award 40835, the Board recognizes the importance of the Carrier’s obligation to give notices required in accordance with the Agreement. This is the message of such decisions as Third Division Award 34153, cited by the Organization in support of the claim. We held in Award 40835 that Rule 31 does not obligate the Carrier to give the five days’ notice to employees whose positions are not being abolished in the force reduction. As we stated in that Award:

“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.’”

In this case, the Alonzo Claimants were not displaced by a force reduction that abolished their positions; instead, they were displaced due to the exercise of seniority by more senior employees whose positions were abolished in the force reduction. As we held in Award 40835, while an employee being displaced in this way would be entitled to notice of the displacement from the displacing employee, an employee

whose position is not abolished is not entitled to notice from the Carrier under Rule 31. The claim is accordingly denied with respect to the Alonzo Claimants.

As for the Hansen Claimants, they were given five working days' advance notice (on February 21, 2006) that their jobs would be abolished effective at the end of the shift on February 27, 2006. The Organization objects that these notices were insufficient because the words "force reduction" did not appear on the notices. Nonetheless, the Board finds that these notices, while not identical to the notice form in Rule 49, contained sufficient information to satisfy the Carrier's obligation to the Hansen Claimants under Rules 31 and 49. The notices specifically stated that the employees' positions would be "abolished" on the designated date, and showed copies to Organization representatives. Even the Note to Rule 31 states, "Brief telephone advice of position abolished *or* force reduction shall be considered compliance with this rule," as long as written confirmation follows. The italicized "*or*" indicates that "force reduction" is not a magic phrase that must be included in notices given under Rules 31 or 49. Even if the Claimants did not hear a Carrier representative refer to the changes as a "force reduction" until February 24, 2006, the Organization failed to prove that this invalidates the notices properly given on February 21, 2006.

For these reasons, the claim must be denied as to all 19 Claimants.

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 10th day of March 2011.

****CORRECTED****

Labor Member's Dissent
to
Third Division Award 40906 (SG-40753)
Referee Lisa Salkovitz Kohn

The undersigned respectfully objects to and dissents from the Board's Third Division Award No. 40906, dated March 10, 2011.

In this case, the Neutral member ruled that, *"these notices, while not identical to the notice form in Rule 49, contained sufficient information to satisfy the Carrier's obligation to the Hansen Claimants under Rules 31 and 49."*

She pretends that Rule 31 is permissive in nature and that, as long as Carrier presents *"sufficient"* information in a timely manner, it has satisfied its *"obligation."*

She essentially ignored that the negotiating parties had settled on the word *"shall"* in crafting Rule 31; leaving no doubt that the *"form prescribed in Rule 49"* must be delivered and confirmed in order to be considered proper notice.

To this date, the Claimants have yet to receive proper notice, and the Minority rejects the subjective interpretation of Rule 31 by this Neutral.

RULE 31

"REDUCTION IN FORCE: (a) 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." (Emphasis added)

Consequently, Third Division Award No. 40906 is without precedential value, and I must dissent.

A handwritten signature in black ink, appearing to read "K. Haley", with a stylized, cursive script.

Kelly Haley
Labor Member
Vice President
Brotherhood of Railroad Signalmen