

Award No. 590

Docket No. CL-565

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS
AND STATION EMPLOYES**

**THE CHICAGO, ROCK ISLAND & PACIFIC
RAILWAY COMPANY**

**THE CHICAGO, ROCK ISLAND & GULF RAILWAY
COMPANY**

(Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim of I. W. Newberry, clerk, seniority date July 21st, 1919, Seniority District No. 19, for pay at rate of \$142.00 per month, for six (6) working days, June 23rd to June 29th, 1936 (both dates inclusive), account position of Cashier at Wewoka, Okla., discontinued without giving him reasonable advance notice of intent to abolish his position."

STATEMENT OF FACTS: The following statement of facts was jointly certified by the parties:

"The position of Cashier had been maintained at Wewoka, Okla. since prior to 1917. Effective 5:00 P. M., June 22nd, 1936, the position was discontinued. Mr. I. W. Newberry, seniority date July 21st, 1919, had been on the position of Cashier for a number of years, assigned working hours, 8:00 A. M.-12:00 Noon-1:00 P. M.-5:00 P. M. At about 9:00 A. M. Saturday June 20th he was notified by the agent that effective Monday at 5:00 P. M. his job would be discontinued. Mr. Newberry was checked out on the job of Cashier at 5:00 P. M. Monday June 22nd."

POSITION OF EMPLOYEES: "The first paragraph of Rule 25 of the Agreement as revised and effective January 1st, 1931, reads as follows:

'When reducing forces seniority rights shall govern. As much advance notice as possible will be given employees affected in reduction of forces, or in abolishing positions. Employees whose positions are abolished may exercise their seniority rights over junior employees. Other employees affected may exercise their seniority in the same manner. Employees displaced whose seniority entitles them to regular positions shall assert their rights within ten (10) days.'

"The employees contend Mr. Newberry should have been given at least ten (10) days advance notice that his position of Cashier at Wewoka was to be discontinued. This position had been in existence for a number of years and business at that station was materially improved over the previous year and

the employe entitled to a six days' notice, perhaps on grounds of equity or otherwise, but he goes further and states that the carrier is required under the contract, regardless of conditions to give six days' notice.

"It is to be further noted that Mr. McLean and the carrier negotiated the inclusion of this sentence to remedy what he alleged in his explanatory memorandum was a practice of giving only a few minutes notice. Nothing was said at that time about a six days' notice either in the rule or in the explanatory memorandum.

"While as stated the only real dispute is what is meant by that part of Rule 25 quoted, we desire to advise the Board that Mr. Newberry, the employe holding the position of cashier at Wewoka which was abolished on June 22nd, did not place himself on another position until July 6th, and when he did exercise seniority, it was on a position of cashier at Seminole, Oklahoma, a station 13 miles west of Wewoka, paying the same salary. Mr. Newberry knew on June 20th that he was senior to the cashier at Seminole, and there is no reason, had he desired to do so, why he could not have started to work at Seminole on June 23rd as he did on July 6th.

"The claim of the employes can not be sustained under any provision now existing in the Clerks' Contract. Recognition of the claim, whether it be for ten days, six days, or one day, would be equivalent to adding something to Rule 25 which is not there. The Railway Labor Act under which your Board exists does not delegate to your Board the power of formulating new rules, of adding to or taking from present rules. Therefore, this claim should be denied—first, because it has no foundation under the schedule; second recognition would necessitate a new rule."

OPINION OF BOARD: As is shown in the Statement of Facts, Mr. I. W. Newberry, cashier at Wewoka, Okla., was notified about 9:00 A. M., Saturday, June 20, that this position would be discontinued effective 5:00 P. M., June 22, 1936.

Rule 25 provides, in part:

"As much advance notice as possible will be given employes affected in reduction of forces, or in abolishing positions."

The employes contend that the carrier is obligated under this rule to give as much advance notice as possible, which means one, six, or ten days, if it is not possible for the carrier to determine in advance of that period, that the position is to be discontinued or abolished; that there were no emergent circumstances or conditions obtaining which warranted the carrier in giving such a short notice in the instant case, and that the carrier could and should have informed Mr. Newberry approximately three weeks prior to June 22, 1936, that it intended to cut off his job.

The carrier represents that Rule 25 does not impose upon it the obligation to give a notice of any particular length of time when discontinuing a position. Carrier admits, however, that this rule does require it to give as much advance notice as possible to employes affected in the reduction of forces, or in abolishing positions.

The carrier has failed to show any good reason for its precipitous action in abolishing the position in question, or that as much advance notice as possible was given to Mr. Newberry, the affected employe, when his position was discontinued. It has not shown just when it was decided to abolish the position nor any particular reason, other than economy, for abolishing it as of June 22, 1936, instead of a few days later, thus to accord to the employe a little chance to survey his seniority opportunities.

Of course if the rule has any meaning at all it is hardly to be nullified by reasons of economy.

It is the view of the Board that the meaning of the rule is that the carrier shall give such notice as is reasonably possible having regard for all the circumstances involved. This was a small station and it would be necessary for the employe to place himself at some other point, involving changes in his home and other matters, things that could hardly be expected to be done on such short notice as was given. It is thought he should have been given at least to the end of the week beginning June 22nd.

In reaching this conclusion the Board expressly disclaims any intention to write into the rule a definite period of notice, considering as before stated that it requires such notice as is reasonably possible in all the circumstances in any particular case.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the carrier violated the provisions of Rule 25 in not giving I. W. Newberry as much advance notice as possible when the position he held was discontinued effective 5:00 P. M., June 22, 1936; and that he should have been given until June 27th or 5 days more than he was given.

AWARD

Claim sustained to the extent indicated by findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Ill., this 24th day of March, 1938.