

Award No. 755  
Docket No. CL-755

**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**

**MISSOURI PACIFIC RAILROAD COMPANY**  
(Guy A. Thompson, Trustee)

**STATEMENT OF CLAIM:** "Claim of the System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes of the Missouri Pacific Railroad Company, that the Carrier violated the Clerks' Agreement,

1. When on December 3, 1937, it abolished the position of yard clerk, assigned hours 10:00 P. M. to 6:00 A. M., six (6) days per week, rate \$5.34 per day at Cornell, Kansas, and failed to give the occupant, H. O. Fettters reasonable notice of intent to abolish the position;
2. When it failed to give the local chairman a copy of abolition notice in accordance with Rule 19;
3. When it restored the position of yard clerk at Cornell, Kansas on December 7th, 1937, and failed to bulletin same in accordance with the agreement; and

That Clerk, H. O. Fettters shall be compensated for wage loss sustained on December 3rd, 4th and 6th, 1937, at the rate of \$5.34 per day—amount \$16.02."

**EMPLOYES' STATEMENT OF FACTS:** " \* \* \* \* \* .

"On December 2nd, 1937, the clerical station force at Cornell, Kansas was:

| CLASSIFICATION | RATE<br>OF PAY | ASSIGNED HOURS            | DAYS PER<br>WEEK |
|----------------|----------------|---------------------------|------------------|
| Bill Clerk     | \$5.29         | 3:00 P. M. to 11:00 P. M. | 7                |
| Yard Clerk     | \$5.34         | 10:00 P. M. to 6:00 A. M. | 6                |

"The duties which constituted the substance of position of yard clerk, which position was established per Superintendent's Bulletin No. 50, dated September 30th, 1937, copy attached designated as Exhibit 'B'—were:

1. Make list of inbound loads switch engine brings in for engine foreman to work by.
2. Weigh loads.
3. Make outbound lists for trains to pick up.

**OPINION OF BOARD:** The position of Yard Clerk here involved was established by Bulletin No. 50, September 30, 1937, and was filled each day of the week except Sunday, until December 3. After the occupant thereof reported for duty at 10:00 P. M., December 2, 1937, Carrier notified him verbally that with the termination of his tour of duty at 6:00 A. M., December 3, his position would be abolished under Rule 19, due to a decrease in the number of cars of coal to be billed out. Position was restored and the former occupant reassigned thereto effective December 7, 1937.

It will, therefore, be noted that Clerk Fettters, the affected employee, received less than eight hours' notice of the fact that the force was being reduced by the abolishment of his position. It is also shown that written notice, as contemplated in Rule 19, was not given, or was the Local Chairman given copy thereof, also provided for by this rule. The only reason the Carrier gives for its conduct in abolishing this position is the fact that there was a decrease in business and carrier considered it necessary to affect economies in operation.

The record shows that the falling off in coal loadings, claimed to warrant the action taken, was in evidence as far back as November 24, 1937, and no good reason appears why he should not have been given some advance notice in the intervening period between then and December 2.

The situation in the instant case was much like that involved in Award 590; it was necessary for the employee to place himself elsewhere, to do which he immediately made two efforts, but before he could locate, the Management recognized that the abolition of his position December 3, was premature.

Notice such as was given is in effect no advance notice at all and to hold it to be a compliance with the third paragraph of Rule 19 would be to write the rule out of the agreement.

With no intention of establishing a fixed interpretation of the rule as requiring any particular number of days' notice as being requisite in any and all circumstances, the Board finds that in the instant case no reasonable effort was made to comply with the rule.

See Awards 407 and 590.

**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 employee involved in this dispute are respectively carrier and employee 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 the current agreement, as indicated by Opinion.

#### AWARD

Claims of petitioner sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 18th day of November, 1938.