

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

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**PARTIES TO DISPUTE:**

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

**THE DENVER & RIO GRANDE WESTERN RAILROAD CO.**

(Wilson McCarthy and Henry Swan, Trustees)

**STATEMENT OF CLAIM:** "Claim of Mr. Nephi Kay, extra gang timekeeper, Salt Lake Division, that he be compensated one day's pay at rate of \$4.37 per day, plus two hours overtime on account of being deprived of the opportunity to work on June 16, 1936."

**JOINT STATEMENT OF FACTS:** "Mr. Nephi Kay was assigned as timekeeper, extra gang, at Roy, Utah, which assignment was on a ten hour basis. Mr. Kay was notified under date of June 15th that his position was abolished at the close of shift that date.

"The Organization contended that Mr. Kay was entitled to be paid for June 16th under the provisions of Rule 20, which contention was denied by the Management."

**EMPLOYES' POSITION:** "Mr. Kay was assigned to this position under the following bulletin dated April 13th, 1936:

'There is a temporary position for one extra gang timekeeper, extra gang No. 1, six days per week, Sunday and designated holidays exclusive. Rate of pay \$4.37 per eight hour day; gang working ten hours per day.'

"At 4:40 P. M., June 15th, 1936, Mr. Kay was notified that his position was discontinued at the close of shift that date. We contend that such action was a violation of Rule 20, which provides:

'Twenty-four hours notice and more, if possible, will be given before general reduction in force.'

"It has been the practice on the Denver & Rio Grande Western to give employees at least twenty-four hours notice or more, if possible, when reducing forces, and this is the first instance on record where the employee has not been given this consideration.

"A general retrenchment policy was followed by the Carrier during the month of June, 1936, and force reductions were made in all departments where positions could be abolished.

"On the Salt Lake Division the following positions were abolished during the month of June, 1936.

1—Utility Clerk, Roper Yard Office—abolished June 3, 1936.	
1—Jumbo Clerk, " " " " " 11, "	
1—Extra Gang Timekeeper, Midvale, Utah " " 15, "	
1 " " " Roy, Utah " " 15, "	
1—Car Checker, Helper, Utah " " 15, "	
1—Utility Clerk, Roper Yard Office " " 15, "	

"The employes occupying these positions all received at least twenty-four hours notice, with the exception of Mr. Kay, the claimant in this case. As evidence that it was the practice to give twenty-four hours or more notice before reducing forces, we submit the following.

"The timekeeper of the extra gang at Midvale and the utility clerk at Roper Yard Office received notice June 15th and occupied the position the following day, June 16th.

"The Organization requests that Mr. Kay be compensated in accordance with claim presented."

**CARRIER'S POSITION:** "This claim originated on our Salt Lake Division and was brought about by abolishing the position of timekeeper on extra gang No. 1, June 15, 1936.

"On June 15, 1936, Roadmaster Hightower sent the following message to Extra Gang Foreman J. J. Barry, at Roy, Utah.

'Reduce extra gang to 24 men tonight. Cut off timekeeper. M-45.'

"This message was delivered to Timekeeper Nephi Kay at 4:40 P. M. June 15th, and by reason of the fact he was required to discontinue work at the close of his shift on that date, the instant claim was presented as a violation of that part of Rule 20 of the current Clerks' Agreement which reads:

'Twenty four (24) hours notice, and more if possible will be given before general reduction in force.'

"It is the practice of the Carrier to give as much advance notice of a force reduction as possible whether such reduction is a general one or not, and in instances where more than one clerk is employed in an office, effort is made to give more than 24 hours notice of any reduction in force.

"Mr. Kay was the only employe in this extra gang who came within the provisions of the Clerks Agreement. The Carrier holds that laying off one employe who comes within the scope of the clerks agreement cannot be construed as a general reduction of force. In other words, the Carrier contends that 'general reduction in force' in Rule 20 applies only to employes coming within the provisions of the Clerks Agreement, and not to any general reduction of forces in other classes, such as the Maintenance of Way in this case."

**OPINION OF BOARD:** Based on the facts presented the Board finds the abolishment of the position in question was only one of several abolishments and is of the opinion that, under the provisions of Rule 20, at least twenty-four (24) hours notice should have been given of the abolishment of the position. Therefore, the claim should be sustained.

**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 claim shall be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 1st day of March, 1940.