Award No. 1772
Docket No. CL-1782

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

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

DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

(Wilson McCarthy and Henry Swan, Trustees)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Mr. Tom Nasious, Assistant Foreman, Barrel Transfer, Salida, Colorado, be paid one day's pay, April 7, 1941, account not being permitted to work on that date.

JOINT STATEMENT OF FACTS: Notice was given Saturday, April 5, 1941, that position of Assistant Foreman, Barrel Tranasfer, Salida, Colo. would be vacated at the close of work that day. This transfer did not work on Monday, April 7, 1941, but it did work on April 8, 1941, and as result thereof Assistant Foreman Tom Nasious presented claim for one day's pay account not used on April 7, 1941, which claim was denied by the management.

POSITION OF EMPLOYES: It is the position of the Organization that Rules 20 and 61 of the Agreement in effect on April 7, 1941, were violated by this handling. Rule 20 provides, in part:

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

Last paragraph of Rule 61 provides:

> "Nothing herein shall be construed to permit the reduction of days for the employes covered by the rule below six per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays."

We contend that twenty-four hours' notice was not given, as Mr. Nasious was informed at the close of work Saturday, April 5, 1941, that the position would be abolished as of Monday, April 7, 1941. The purpose of the twenty-four hour, or more, notice rule is that an employe whose position is abolished may have an opportunity to exercise his seniority without loss of time. In this particular instance Mr. Nasious did not have that opportunity, as the only position available for him to displace was a position with a starting time of 3:00 A. M. Even if it had been possible for Mr. Nasious to exercise his seniority on this particular position, the employe affected would not have had an opportunity to in turn exercise his seniority, without loss of time.

It will be noted Rule 20 contemplates giving notice "before general reduction in force" and in the case covered by Award 1043 the Board found "the abolishment of the position in question was only one of several abolishments."

The same situation is not in evidence in the instant claim, as there was no general reduction in force involved. It is the practice of the Carrier to give as much advance notice of a force reduction as possible, whether such a reduction is a general one or not. The Carrier holds it gave Mr. Nasious as much advance notice as was possible to give under the circumstances. What is here said with respect to Award 1043 applies, as well, to the Employes' contention that Rule 20 is applicable.

It is the contention of the Carrier that Award 1263 has no application whatever, as the Award covered an entirely different situation. Award 1263 dealt with the same position at the same locality, however, the circumstances in that case were, while the position of Assistant Foreman was vacated from May 13, 1936, to July 10, 1936, at times during this period, an employe in Group 2 was used at intervals on a part time basis on work of the position of Assistant Foreman.

Rule 61, as quoted above, is self-explanatory. There was no violation of this rule. Mr. Nasious worked a full six days in the week ending April 5, 1941, and there was nothing to prevent his having worked a full six days the following week. While Mr. Nasious did not work on Monday, April 7, 1941, there was no reason why he could not have exercised his seniority and displaced a check clerk at the freight house, which latter position, carries a slightly higher rate than position of Assistant Foreman.

OPINION OF BOARD: The facts do not disclose a "general reduction in force" within the meaning of Rule 20.

One position only was abolished, and the record discloses that this position was in fact abolished on Saturday, April 5. The work performed on April 8, was simply temporary work occasioned by the request of the Colorado Fuel and Iron Company that there be transferred the unbilled coal then on hand. Rule 61 of the agreement applies to regularly assigned positions, and not to this work for one day occasioned by the request of the Fuel and Iron Company.

The instant facts disclose that this position was in fact abolished on April 5 which distinguishes this Docket from Docket No. CL-1131, Award No. 1263, in which the facts disclosed that the position was operated throughout the period involved, only on a reduced basis.

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 employes involved in this dispute are respectively carrier and employes 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 record discloses no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of April, 1942.