

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5078) that:

1. The Carrier violated the Clerks' Agreement at San Antonio, Texas, when on December 15, 1960, Bulletin SA-315-1 dated December 14, 1960, was posted advertising abolition of Line Desk Clerk No. 1174, effective with termination of assignment December 17, 1960, which did not give the employee at least three (3) days' notice in advance of the effective date reduction was to be made as required under Rule 19 (a).

2. That R. W. Halfman be allowed one (1) day's pay as Line Desk Clerk No. 1174, rate of \$19.63 per day.

EMPLOYEES' STATEMENT OF FACTS: On December 14, 1960, Superintendent Mr. J. G. Sheppard, Palestine, Texas, issued Bulletin No. SA-315-1 abolishing Line Desk Clerk No. 1174, San Antonio, Texas, effective with termination of assignment December 17, 1960. Employees' Exhibit A.

Bulletin No. SA-315-1 was posted at San Antonio, Texas, sometime during the day December 15, 1960.

On December 18, 1960, Mr. R. W. Halfmann, occupant of Line Desk Clerk No. 1174, filed time claim for one (1) day's pay under Rule 19 (a) account not allowed proper three (3) day advance notice of the effective date position was to be abolished. Employees' Exhibit B.

On January 24, 1961, Mr. J. G. Sheppard, Superintendent, declined the claim, stating that the bulletin was issued in line with Rule 19. Employees' Exhibit C.

On March 8, 1961, appeal was made to Assistant General Manager Mr. D. E. Walker and claim denied. Employees' Exhibits D, E and F.

On May 19, 1961, appeal was made to the highest Carrier officer designated for that purpose and claim was denied. Employees' Exhibits G and H.

"Employees exercising seniority by displacement must give at least twenty-four (24) hours' advance notice to the proper official and the employee to be displaced with a copy to Division Chairman."

All Claimant had to do after returning from his two rest days on December 16 was to select the position on which he desired to displace on December 18 or within ten days from December 17 and so notify the incumbent twenty-four hours in advance of the date he would displace. There was no occasion for Claimant suffering any loss in compensation, nor did he.

In conclusion, we would again remind your Board that Rule 19(a) makes no provision for excepting rest days, or any other absentee days, of the regularly assigned employee from the three days' notice, which, as has previously been pointed out, says three days, meaning three calendar days, not three working days.

In view of the fact that the notice was posted on the bulletin board at San Antonio December 15, 16 and 17, three days, in compliance with Rule 19(a), and in accordance with the practice that has been followed for many, many years, it is the position of Carrier that the claim here presented is without basis or merit, and accordingly should be denied.

OPINION OF BOARD: The essential facts are not in dispute. Immediately prior to December 17, 1960, the Claimant held the position of Line Desk Clerk at San Antonio, Texas. He was assigned to work 3:00 P.M. to 11:00 P.M., Friday through Tuesday, with rest days on Wednesday and Thursday.

On December 14, 1960, the Carrier sent the following telegram addressed to Claimant and others, including the Division Chairman, to its San Antonio office:

"Effective with termination of assignment Dec. 17, 1960, position of Line Desk Clerk No. 2 (1174) occupied by R. W. Halfman will be abolished. Bulletin to follow. Orig. RWH Cy A.C.G. LHM JHL B-43."

It was received at San Antonio at 4:00 P.M.

That same afternoon, divisional headquarters at Palestine, Texas, mailed the usual bulletin notice of job abolishment. It arrived San Antonio on December 15, and was posted. At that time an unsuccessful effort was made to contact Claimant (he was on his rest day) to inform him of the bulletin's contents.

Rule 19 (a) of the Agreement is applicable and controlling. In pertinent part, it reads:

"(a) Except as otherwise provided in paragraph (b), regularly assigned employees affected in reduction of force shall be notified at least three (3) days in advance of the effective date reduction is to be made. . . ."

Under the material facts of record, the sole issue presented here is whether the required three-day advance notice was given Claimant.

What constitutes such notice has been decided on this property. Award 5058, involving these same parties and the identical issue, held, among other things not pertinent here, that a bulletin posted on February 1, 1949, carrying a job abolishment effective date of February 3, "... did not constitute a notice under Rule 19(a)." There it was also held that a written notice given Claimant on January 31, 1949, was "... the only proper notice under Rule 19(a). . . ."

In the light of the foregoing interpretation and application of Rule 19(a), which we find to be proper and controlling here, the Board concludes that notice not having been given Claimant on December 14, 1960, there was a violation of Rule 19(a).

Accordingly, the claim will be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1964.