Award No. 14920
Docket No. SG-14539

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway Company:

> On behalf of J. C. Wright for payment of eight hours at his pro rata rate of pay for September 10, 1962, account not being given five working days' advance notice of the abolishment of his regular assigned position in Signal Gang No. 1-C on the Northern Division. [Carrier's File: 132-135-A-1]

EMPLOYES' STATEMENT OF FACTS: As indicated by our Statement of Claim, we contend that Carrier should be required to compensate Mr. J. C. Wright for eight hours at his pro rata rate of pay for September 10, 1962, because it abolished his regular assigned position without giving him five working days' advance notice.

Mr. Wright was the incumbent of a Signalman position in a gang, then headquartered at Alvarado, Texas, with a Monday through Friday work week. On Friday, August 31, 1962, Carrier notified him that the gang would be abolished effective at the close of work Friday, September 7, 1962.

Article III of the National Agreement of June 5, 1962, requires not less than five working days' advance notice of reduction in forces or abolishment of positions. As Monday, September 2, 1962, was a holiday, and not a work day, Carrier's notice was less than five working days.

In view of the fact that Carrier failed to give Mr. Wright the required advance notice of the abolishment of his position, the Local Chairman presented a claim to the Superintenednt for eight hours' pay for Mr. Wright for September 10, 1962. A copy of the Local Chairman's claim is attached hereto as Brotherhood's Exhibit No. 1. The Superintendent's denial, dated November 8, 1962, is Brotherhood's Exhibit No. 2.

Under date of December 24, 1962, the General Chairman presented an appeal (Brotherhood's Exhibit No. 3) to the General Manager, with a copy

"ARTICLE III.

ADVANCE NOTICE REQUIREMENTS

Effective July 16, 1962, existing rules providing that advance notice of less than five (5) working days be given before the abolishment of a position or reduction in force are hereby revised so as to require not less than five (5) working days' advance notice. With respect to employes working on regularly established positions where existing rules do not require advance notice before such position is abolished, not less than five (5) working days' advance notice shall be given before such positions are abolished. The provisions of Article VI of the August 21, 1954 Agreement shall constitute an exception as to the foregoing requirements of this Article."

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim for the payment of eight hours pro rata rate for September 10, 1962, on the grounds that Carrier violated the Agreement by failing to give the required five days' advance notice of the abolishment of his regularly assigned position.

The facts are not in dispute. Claimant was the incumbent of a Signalman position, then headquartered at Alvarado, Texas, with a Monday through Friday workweek. On Friday, August 31, 1962, Carrier notified Claimant in writing that the gang (Signal Gang No. 1-C) would be abolished at the close of work on Friday, September 7, 1962, and he could report to work with Signal Gang No. 1 at Sweetwater on September 10, 1962. Claimant reported for work with the new gang on September 10.

Claimant, through the Organization, contends that he was not given the required five working days' advance notice (pursuant to Article III of the June 5, 1962 National Agreement) because September 3, 1962 was the Labor Day holiday and could not be considered a "working day" under the Agreement, and therefore entitled to eight hours' pro rata pay.

Carrier admitted that it committed a technical violation of the Agreement, but contended that Claimant did not suffer any loss. (It should be noted that Carrier's admission of violation relates only to its own interpretation of the Agreement in the instant dispute, and is not binding on this Carrier or other Carriers in other or subsequent claims.)

It is clear from the Record that: (1) There are no specific penalty provisions in the Agreement for violation of Article III, (2) Claimant suffered no monetary loss or damage, and (3) Carrier's violation was inadvertent, and not in bad faith or arbitrary.

The specific issue before this Board is whether, under the circumstances, Carrier should be assessed a penalty for violation of Article III of the Agreement.

Once again we are called upon to consider one of the basic questions of damages which has confronted this Board from its inception.

Both sides, with equal facility, are able to cite long lists of awards supporting their respective positions. The split of authority is becoming legion.

This Board, through this Referee, in Award 14371 reviewed the history and development of this question and concluded that the later awards, supported and reinforced by the case of **Brotherhood of Railroad Trainmen v. Denver & Rio Grande Western Railroad Company**, (C.A. 10th) 338 Fed 2nd 407, (cert. den. 85 S. Crt. 1330), are the better reasoned and controlling.

We shall not, in the instant dispute, alter our holding in Award 14371 that: (1) The Board has no power to enforce penalty provisions without specific provisions in the Agreement, (2) Recovery for a violation is limited to actual monetary loss, and (3) Absent proof of actual loss, recovery is limited to nominal damages.

Thus, while there is nothing in the Record to warrant an assessment of a penalty against the Carrier, the Board finds that the Agreement was violated, and nominal damages are assessed in the amount of One Dollar.

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 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 Agreement was violated.

AWARD

The Claim is sustained consistent with the Opinion of this Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November 1966.

DISSENT TO AWARD NO. 14920, DOCKET SG-14539

The Majority in Award No. 14920 (carrier members and Referee) have again resorted to their fallacious doctrine of "nominal damages." Our contrary position as set out in the labor member's special concurrence to Award No. 10730 and others is well known.

Award No. 14920 is in error; therefore, I dissent.

W. W. Altus
For Labor Members
12/2/66

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