NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ST. LOUIS-SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed to give Carpenter E. H. Reeves at least five working days of advance notice before making reduction in force at the close of work on Monday, December 16, 1963. (System Case No. N-895 file 93-819-D-1.)

(2) Carpenter E. H. Reeves be allowed three days' pay (December 17, 18 and 19, 1963) at the carpenter No. 2's straight-time rate because of the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: The claimant was a regularly assigned carpenter No. 2 in the gang under the supervision of Carpenter Foreman H. G. Johnston. He was regularly assigned to work Monday through Friday of each week. Saturdays and Sundays were designated rest days.

On Thursday, December 12, 1963, Foreman Johnston received a letter reading:

"Pine Bluff
December 11, 1963

Mr. H. G. Johnston:

Reference my conversation with you date, please arrange to cut E. H. Reeves off your gang effective with close of work Monday, December 16, 1963.

/s/ E. R. S.
E. R. Simmons

cc: Mr. E. H. Reeves
Mr. W. E. Cox
Mr. J. M. Lowry

ERS:jr"

During regular working hours on December 12th, Foreman Johnston orally advised the claimant that he would be cut off effective at the close

is on the Northern Division. There was a verbal agreement between Mr. Patterson and the Employes' General Chairman that this arrangement could be made if two furloughed carpenters on the seniority district north of Texarkana were called to work on B&B Gang No. 14 while the Texas gang was on the Shreveport Branch. Furloughed Carpenters G. M. Bohannon and E. H. Reeves were recalled, however, because of some physical difficulties which Reeves had experienced; it was understood that he would be required to undergo a physical examination before reporting for duty. Bohannon only worked 8 days, October 8-17, and then transferred to the Operating Department as a locomotive fireman. Reeves did not report to Gang No. 14 until October 28.

The carpenter gang from Texas was moved off the Shreveport Branch on November 1, 1963. Since it had been agreed to work two extra men on B&B Gang No. 14 during the time the Texas gang was on the Shreveport Branch, Reeves was permitted to work until December 16 to make up for the time which he and Bohannon did not work in October.

On Wednesday morning, December 11, 1963, B&B Supervisor E. R. Simmons contacted Foreman H. G. Johnston on B&B Carpenter Gang No. 14 and advised him to reduce Carpenter Reeves from his gang at the close of work Monday, December 16, 1963. Mr. Simmons addressed letter (Exhibit No. 1) to Foreman Johnston confirming the conversation. Reeves was notified by Foreman Johnston on December 11th that he would be cut off the gang at the close of day's work December 16, 1963. Reeves worked Thursday, December 12 and Friday, December 13, however, he did not report for work Monday, December 16.

The Employes filed claim for a day's pay for Mr. Reeves for December 17, 18, and 19, 1963, alleging that he was not given five work days' advance notice of being reduced from the gang as required by Article III of the June 5, 1962 Agreement.

The claim was denied.

Exhibit No. 1 is attached hereto and made a part hereof.

The applicable schedule agreement is that with the Brotherhood of Maintenance of Way Employes effective September 1, 1947, as amended by Supplemental Agreement effective September 1, 1949, relating to the 40-Hour Week, copy of which is on file with the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: On December 12, 1963 Claimant received notice of force reduction effective close of work December 16, 1963.

Petitioner asserts that Carrier violated the Agreement because such notice was inadequate in that Article III of the June 5, 1962 Agreement requires "not less than five (5) working days' notice." (December 16, 1963 fell on a Monday.)

Carrier contends that Claimant was not working a regularly assigned position and therefore the notice requirements of Article III of the June 5, 1962 Agreement are not applicable.

An examination of the record in this dispute fails to establish whether the Claimant was regularly assigned. Under this Board's holding in Award 15152, we are constrained to dismiss this claim. In that Award the Board stated:

"Claimant had the burden of proving that on January 21, 1964, he was a **regular employe** on Section 31, Cheyenne, Wyoming before his claim could be allowed. Consequently, the Board has no other alternative than to deny the claim." (Emphasis ours.)

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 not violated.

AWARD

Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November, 1968.

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