Award No. 18358
Docket No. SG-18590

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Long Island Rail Road Company:

On behalf of Signalman E. Sivaslian for eight hours' pay for November 26, 1968, account Carrier abolished his position without giving him proper notification.

(Carrier's File: SG-4-69)

EMPLOYES' STATEMENT OF FACTS: Claimant in this dispute is T & T Signalman E. Sivaslian, with headquarters at Jamaica, New York on November 23, 1968, Claimant was unable to report for his regular tour of duty because of illness. He so advised the proper officer of the carrier and confirmed such illness to an officer of the carrier who called him in the afternoon of the same day.

The following day, November 26, when Claimant reported for duty, he was shown a cut off notice that had been posted at his headquarters, and was not permitted to work.

Because of improper notification of the abolishment of his position, a claim was filed on behalf of Mr. Sivaslian for payment of eight hours lost time on November 26, under provisions of Rule 37 of the Agreement and amendments thereto.

Rule 37 of the Agreement and its amendments are copied below for ready reference.

"RULE 37

When a position is abolished, the employe filling that position shall be given at least 48 hours advance notice. No advance notice need be given to an employe who is displaced by an employe whose position is abolished, nor to an employe employed for temporary or emergency service in a position or vacancy which is not required to be advertised.

after 5:59 A. M., Tuesday, November 26, 1968. A copy of the bulletin addressed to the Signal Department employes is attached hereto and identified as "Carrier's Exhibit No. 9." This notice was posted more than sixteen (16) hours prior to the time the job abolishments became effective.

As a matter of further interest to your Board, after the Carrier secured a Court Order requiring the Brotherhood of Railroad Trainmen to cease their illegal work stoppage the Brotherhood of Locomotive Engineers thereafter refused to return to duty—thus creating an additional work stoppage. The strike which began with the Brotherhood of Railroad Trainmen on November 25, 1968, lasted for more than three (3) days.

(Exhibits not reproduced.)

OPINION OF BOARD: Due to an emergency caused by a strike of the Brotherhood of Railroad Trainmen, Carrier abolished all positions for the duration of the work stoppage. Carrier posted notice of said abolishment of positions on November 25, 1968 on bulletin boards. Claimant, who was off sick on November 25th, reported for work on November 26th, and is claiming that he did not receive proper notice as required by Article VI of the August 21, 1954 Agreement and Rule 37 of the Agreement.

Rule 37 of the Agreement states as follows:

> "When a position is abolished, the employe filling that position shall be given at least 48 hours advance notice. No advance notice need be given to an employe who is displaced by an employe whose position is abolished, nor to an employe employed for temporary or emergency service in a position or vacancy which is not required to be advertised."

Article VI of the August 21, 1954 Agreement reduced the 48 hour advance notice, as set forth in said Rule 37 to 16 hours by providing as follows:

> "Rules, Agreement or practices, however established, that require more than sixteen hours advance notice before abolishing positions or making force reductions are hereby modified so as not to require more than sixteen hours such advance notice under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike, provided the Carrier's operations are suspended in whole or in part and provided further that because of such emergency the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employes involved in the force reduction no longer exists or cannot be performed."

Carrier's defenses to this claim are: that Article VI is silent as to the method by which such notice shall be given and there is no requirement in the Rule which would cause the giving of individual personal notice to employes; that signalmen employes have never been given individual notices when their positions were abolished under conditions set forth in said Article VI; that at no time has there been protest from these employes for failure to give individual personal notice; that because Claimant had marked off sick for an indefinite period of time, Carrier would not under any circumstance been required to call and notify Claimant of the temporary abolishment of his position; that the Organization failed to at any time allege a specific rule to have been violated.

First, in regard to Carrier's contention that the Organization did not allege on the property a specific rule violation, it is seen that Carrier did not at any time on the property assert that it was not aware of any rule prohibiting the action complained of. But, on the contrary Carrier, in its denial to the Organization, made specific reference to the 16 hour notice rule, and this is clearly seen in the letter of Assistant Chief Maintenance Officer, D. W. Aiken, dated December 13, 1968 and the letter of Chief of Maintenance of Way Officer, J. D. Woodward, dated January 2, 1969, in which they stated in both letters that: "An abolishment notice was posted at Mr. Silveslian's headquarters prior to the time specified in our agreement." Further, Carrier's letter to the Organization from Director of Personnel Relations, dated March 3, 1969, stated:

> "On the date in question, Carrier had issued notices of abolishment to all organizations in accordance with the 16 hour notice provided in the applicable Agreement in instances involving emergencies. The emergency in this instance was strike called by the Brotherhood of Railroad Trainmen. There is no question of the legality of the notice nor was the receipt of such notice challenged by any organization or individual."

Thus it is clearly seen that Carrier was completely aware of the alleged specific rule violation involved in the dispute, and was not in any way prejudiced or handicapped by the Organization's failure to so assert an alleged specific rule violation, and therefore Carrier's contention in this regard is without merit and must be denied.

We are confronted herein with rules in the Agreement which do not prescribe the method of the giving of notice of abolishment of jobs in an emergency. Does this mean that the Carrier was required to give "personal" notice to all employes affected including Claimant herein? Or are the requirements as to notice in Article VI of the August 21, 1954 Agreement and Rule 37 complied with by the posting of "notice" on the Carrier's bulletin boards, as was done in this instance by Carrier?

We are of the opinion that the publishing of notice of the abolishment of jobs in this instance amounts to notice to all employes affected by such emergency. There is no question that the Organization had knowledge of the strike as well as notice of the abolishment of jobs due to the strike emergency. It would be placing an unwarranted burden on the Carrier in this instance if we were to conclude that the notice requirements of Article VI required Carrier to personally contact each and every employe, including Claimant herein, and advise that their jobs were abolished due to said strike, especially in view of lack of contractual support for such a method of giving notice. We reach this conclusion notwithstanding the statement set forth in Award No. 200 of Special Board of Adjustment No. 605, cited by the Organization in support of its position herein, that "Posted Notice" does not satisfy the mandate that it "be given" to them.

We feel that we would be adding to, varying, altering or changing the Agreement, which this Board is not empowered to do, if we were to conclude that Carrier was required in this instance to give personal notice to Claimant.

Further, such an interpretation given said Article VI and/or Rule 37 in regard to notice is supported by the undenied statement of Carrier in its ex

parte submission to this Board that this type of notice has been given by Carrier in regard to prior strikes without objection from the Organization.

Therefore, it is our conclusion that Carrier satisfied the requirements of said Article VI of the August 21, 1954 Agreement, as well as Rule 37 of the Agreement, in regard to "notice" when it posted on Carrier's bulletin board notice of the abolishment of jobs due to the strike, and thus we will deny the claim.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of December 1970.

Dissent to Award No. 18358, Docket SG-18590

Award No. 18358 is in error. It is opposed to the holding of Award No. 200 of Special Board of Adjustment No. 605, which is correct and should be considered precedent.

The Majority took note that:

"On the date in question, Carrier had issued notices of **abolishment** * * *."

(Letter of Director of Personnel, March 3, 1969; emphasis ours.)

Agreement Rule 37:

"When a position is abolished, **the employe filling that position** shall be **given** at least 48 hours advance notice. * * *" (Emphasis ours.)

Webster's New World Dictionary says that "**give** is the general word meaning to transfer from one's own **possession** to that of another * * *." (Emphasis ours.)

The letter of the Director of Personnel stating that positions were **abolished** establishes the coverage of Rule 37. That rule requires that **the employee filling that position** (here Claimant) shall be **given** advance notice; i.e., notice shall be transferred in advance from Carrier's own **possession** to the possession of the Claimant. This requirement was not observed.

Award No. 18358 being in error, I dissent.

W. W. Altus, Jr.

W. W. Altus, Jr.
Labor Member

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