

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20235
Docket Number SG-19864

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Kansas City Terminal Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Terminal Railway Company that:

(a) Carrier violated the Signalmen's Agreement, particularly Article IV, Rule 404(a), when it terminated the services of certain signal employees named in part (b) below, without proper notice. The agreement was also violated when Carrier failed or refused to compensate the named employees for April 9, 1971, a holiday.

(b) Carrier should now compensate D. F. Marks, J. J. Goucher, R. C. Cravens, J. L. Edwards, W. W. Chancellor, H. L. Yuille, and M. D. Bradshaw for eight (8) hours' pay each for dates April 7, 8, 12, 13, 14 -- five days advance notice not given -- and eight (8) hours' holiday pay for April 9, 1971.

/Carrier's File: SG-10.71.27

OPINION OF BOARD: The Carrier posted on its bulletin board, under date of March 29, 1971, a General Notice that certain positions in Signal Gang No. 4 would be abolished on April 6, 1971. Incumbents of the abolished positions displaced the seven Claimants herein who then became furloughed. The claim here is that the furloughed employees should receive five days pay under Rule 404 and holiday pay for "Good Friday", April 9, 1971. Rule 404 reads as follows:

"RULE 404: Abolishments and Force Reductions

(a) When force is reduced, the senior employees of the class shall be retained. When regularly established positions are abolished not less than five (5) working days' advance notice, in writing, will be given to the employee(s) occupying such position(s), and such notices will be posted on bulletin boards at Headquarters."

The Employees' argument for five days pay is that the employees occupying the positions abolished by the General Notice dated March 29, 1971, were not properly notified under the foregoing rule. The notice was posted only on Carrier's bulletin board, whereas the rule requires that the notice will be given to the employees occupying such positions

and also be posted on bulletin boards. Whatever the merits of this argument might be in respect to the employees occupying the abolished positions, the argument is not valid in respect to the instant Claimants. The five day notice in Rule 404 is required to be given to employees occupying abolished positions. However, the herein Claimants did not have their positions abolished; they were displaced from such positions by the incumbents of the positions that were abolished. Clearly, these Claimants are not covered by Rule 404 and we must therefore deny the claim for five days pay. For a similar ruling, see Fourth Division Award 1576 (Burch).

With regard to the holiday pay part of the claim, the Carrier's Submission states that the Employees cited no rule on the property in support of this part of the claim. Carrier also, both in its Submission and Rebuttal Brief, argues against the merits of the holiday pay claim. However, the Employees contend that Carrier offered no defense to this part of the claim during handling on the property and that, therefore, the claim for holiday pay should be allowed as presented. The record bears out the Employees' contention on this point. During handling on the property the Carrier entered an extensive defense against the part of the claim which we have denied; however, the Carrier neither demanded that the Employees offer rule support for the holiday pay claim, nor in any other way entered a defense against this part of the claim. Consequently, the contentions which the Carrier would now make to this Board come too late and we shall allow the claim as presented in regard to holiday pay. Accordingly, we deny the claim for five days pay and allow the claim for holiday pay.

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

The Agreement was not violated and part of the claim is allowed as presented.

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Claim denied in part and sustained in part as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1974.