

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22179
Docket Number CL-21935

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(The Western Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8328, that:

"1. The Western Pacific Railroad Company violated Rule 40 (a) of the Agreement when it arbitrarily reduced Mr. W. M. Sessions from the Guaranteed Extra Board with only two (2) days notice rather than the required five (5) days advance notice.

2. The Western Pacific Railroad Company shall now be required to compensate Mr. W. M. Sessions three (3) days pay for violation of Rule 40 (a)."

OPINION OF BOARD: Claimant, a employe on Carrier's Guaranteed Extra Board, was notified on November 10, 1975, that he would be reduced from the Board on November 12, 1975. After this occurred, Claimant alleged violation of Rule 40(a) and claimed three days' pay thereunder. Rule 40(a) reads as follows in part:

"In reducing forces seniority rights shall govern. Not less than five (5) working days' advance notice will be given employes affected in reduction of forces or abolishing positions, . . . "

Carrier makes a general defense that Guaranteed Extra Board personnel are governed by Rule 31½, which encompasses a number of detailed, special provisions applicable only to Guaranteed Extra Board employes. Carrier claims it is these rule provisions which govern Guaranteed Extra Board employes and that the more general rule, Rule 40(a), is inapplicable to them.

The Board does not agree. Clearly a special rule applicable to a particular class of employes and/or a particular situation or location can be said to modify a general rule, if the former specifically and unequivocally is in conflict with the latter. The Board finds no such conflict, however, in regard to force reduction as between Rule 40(a) and Rule 31½. Nothing concerning notice of reduction is found in Rule 31½. In view of this, and although the Carrier argues an opposite view, the general rule applies here.

Carrier cites Rule 31½, Section E (2) which reads in part:

"Employes in service more than sixty (60) days who are recalled to an extra board will be retained on the extra board not less than twenty-one (21) calendar days from date recalled . . . "

Carrier states that its only obligation is to retain Guaranteed Extra Board employes for 21 days and thereafter may reduce them at will. But Rule 31½ Section E (2) is not in conflict with Rule 40(a). For example, applying both rules in harmony, Carrier may give "not less than five (5) working days advance notice" of reduction providing that the date of reduction would be "not less than twenty-one (21) calendar days from date recalled."

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.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1978.

