NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23433
Docket Number MW-2316

Arnold Ordman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Southern Pacific Transportation Company
((Pacific Lines)

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

(1) The Carrier violated the Agreement when it laid off Messrs. B. N. Wolpoff, E. J. Camacho, R. J. Judd, G. R. Szekely, L. G. Martin and J. L. Londo without five (5) working days' advance notice (System File MofW 61-96).

(2) Messrs. B. N. Wolpoff, E. J. Camacho, R. J. Judd, G. R. Szekely, L. G. Martin and J. L. Londo each be allowed forty (40) hours of pay at their respective straight-time rates because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: The critical issue in this case is whether the six named employes were given the required five-day notice abolishing their positions, as required by Rule 13 of the Agreement.

Rule 13 provides, in relevant part:

> "(a) Except as otherwise provided in this section (a), positions will not be abolished nor will forces be reduced until the employees affected have been given at least five (5) working days' advance written notice. When such notices apply to two or more employees in a gang, it may be posted at the headquarters point where Bulletin Boards are maintained for such purposes."

Rule 13(a) goes on to provide for exceptions to this procedure, none of which exceptions is here applicable.

It is undisputed that five working days' advance written notice was not given the employes here involved and, assuming a Bulletin Board existed at the headquarters point under consideration, no such notice was posted.

Carrier defends on the ground that the employes were fully apprised of the proposed abolition twelve days before that action became effective. It appears that notice of the proposed abolition, to take effect on December 27, 1977, together with the names of the employes affected, was communicated by telephone to Reedsport, the location here in issue, on December 15, 1977. On that same day and on the following day, the six employes here named were

notified orally of the communication and copies of the notes made from the telephone conversation were made available to them. An actual written notice of job abolition, which had been typed up on December 15, 1977, was delivered to each employe, but not until December 27, 1977, the day the job action became effective.

The issue here posed is not a novel one. Carrier argues, in essence, that whether or not it satisfied the technical requirements of Rule 13(a), it certainly satisfied the purpose Section 13(a) was designed to achieve in that the six employes here named were made fully aware, well in advance of the five-day notice period, that their positions were being abolished. Yet the fact remains that the literal and explicit language of Rule 13(a) had not been satisfied. A plethora of cases in this and other Divisions establish the principle that an agreement must be applied and interpreted as written and as negotiated between the parties. What the parties have written into the agreement can be changed only with the consent of both. See, for example, Third Division Award No. 20956 (Norris); Third Division Award No. 11488 (Hall). See also First Division Awards 20077 and 20312. We conclude that Carrier violated Rule 13(a) of the Agreement.

On the otherhand, it does not follow that every violation, technical or otherwise, automatically calls for damages. There is no showing here that Carrier acted in bad faith or with any deliberate intent to circumvent or frustrate provisions of the Agreement. Rather, it sought to assure the full protection of the employes concerned but failed to observe prescribed procedures. In these circumstances and absent evidence of monetary loss by the six employes as a result of the violation, the claim for a monetary award will be denied.

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.

A W A R D

Claim 1 sustained.

Claim 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.