NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24443
Docket Number CL-24239

THIRD DIVISION

Ida Klaus, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9476) that:

1) Carrier violated the Clerks' Rules Agreement in Seniority District No. 5 when it arbitrarily reduced forces by abolishing positions starting at 11:59 p.m., February 29, 1980 and continuing to April 18, 1980 without giving the employes affected thereby "not less than five (5) working days advance notice" nor did it issue a standard permanent abolishment notice until April 18, 1980.

2) Carrier shall now be required to compensate all employes affected by the temporary suspension of their positions an additional (8) hours pay at the rate of their assigned position which was abolished, or at their protected rate, whichever is greater, starting either on March 1, 1980 or on the date their respective positions were temporarily abolished, and for each workday until their positions were permanently abolished as of 11:59 p.m. April 18, 1980.

NOTE: Some of the claimants and positions held are listed in Attachment A.

Where positions are not listed and/or where the occupants of positions are not listed in Attachment A, same to be determined by joint check of Carrier's records.

3) Carrier shall be required to compensate all those employes who were displaced by employes whose positions were temporarily abolished as shown in Attachment A, an additional eight (8) hours pay at the rate of their assigned positions, or their protected rate whichever is greater, starting either on March 1, 1980 or on the date they were affected, and for each workday until April 19, 1980.

NOTE: The employes and monetary wage due those employes displaced by employes whose positions were abolished to be determined by joint check of payroll and other necessary records.

OPINION OF BOARD: In this claim the Organization asserts that the Carrier violated the Agreement by failing to give five working days advance notice to employees in Seniority District No. 5 of the abolishment of their positions starting on February 29, 1980. The Carrier responds that it was not required to give advance notice.

The positions were abolished under a Court-ordered embargo issued on February 25, 1980 (Order No. 290-A). The background and provisions of the order are described in detail in the Board's opinion in Award No. 24440 relating to employees in Seniority District No. 1 represented by the Organization.

The attachment to the claim shows the following facts as ascertained by the Organization: Most of the positions referred to were abolished on February 29, 1980, by Carrier-designated "emergency" force-reduction notices dated February 26, and supplemented or revised on February 27, 1980. A substantial number of positions were abolished on various dates in March 1980 by what appears to be advance notice of not less than five working days. The record suggests that a few additional positions were abolished in April 1980, but no exact dates of applicable notices are indicated.

The claim was dated April 28, 1980. It was sent by certified mail and was received on April 30, 1980.

This claim is identical in basic respects with that made in Award No. 24440. It alleges a violation of Rule 12(a) of the Clerk's Agreement by an asserted failure to give "not less than five (5) working days advance notice" to "affected" employees of the abolishment of their positions, starting on February 29, 1980. It seeks compensation for them from the date of the force-reduction notices to the issuance of a standard permanent abolishment notice; and it appends a list of some positions and of the names of some incumbents (Item No. 2). It seeks similar compensation for those who were displaced by employees whose positions were abolished. It also requests a joint check of Carrier records to identify unnamed employees under Items No. 2 and No. 3.

The Carrier's response is also identical in all essential respects with that submitted in Award No. 24440. Stated in broad terms its challenge to the claim is that: (1) It is time-barred under Rule 36. (2) It is invalid as to unnamed and unidentified employees. (3) It improperly seeks a joint check of the Carrier's records. (4) It makes an improper request for compensation in the nature of a "penalty".

Beyond the jurisdictional-procedural arguments, the Carrier defends the substance of its action on the ground that it was relieved of the advance notice obligation because the Court-ordered embargo created "emergency conditions" within the meaning of the exception to Rule 12(a).

On thorough analysis of the record before it and for the reasons fully stated in Award No. 24440, the Board finds as follows:

1. The claim is not barred under Rule 36, as it was "presented" in timely fashion. It is reasonable to assume from its certification number that it was mailed simultaneously with a similar timely claim relating to another seniority district.

2. Unnamed employees have been adequately identified as occupants of the positions listed in the attachment to the claim. They are deemed included in Item No. 2 of the claim and are entitled to be appropriately compensated for any monetary loss they may have suffered by reason of any violation of the Rule 12(a) notice requirement as to them. It is reasonable to allow a joint check of the Carrier's records to ascertain their identity.

3. Unnamed occupants of positions not listed (Item No. 2) and individuals who assertedly may have been displaced by employees whose positions were abolished (Item No. 3) are not adequately identified and are not deemed to be included in the claim. They are not entitled to any compensatory award, and a joint check of the Carrier's records to find and identify them is unwarranted. The claim as to them must be dismissed.

4. The exception to Rule 12(a) does not apply to the facts presented, as no emergency has been shown to exist under the exception. Accordingly, the Carrier violated Rule 12(a) by failing to give employees properly encompassed within the claim no less than five working days notice of the abolishment of their positions. Item No. 1 should be sustained.

With respect to the remedy appropriate to the violation found, for reasons fully stated in Award No. 24440, the Board concludes as follows;

1. Each employee deemed in finding numbered 2, above, to be included in the claim who received less than five working days advance notice of the abolishment of his or her position is entitled to be compensated for each working day, up to five days, for which he/she was not given such notice, at the rate of his/her assigned position or at his/her protected rate, whichever is greater.

2. There is no rational basis for compensating employees whose positions were abolished for each workday until the date of issuance of a standard permanent abolishment notice.

3. Employees referred to in finding numbered 3, above, are not entitled to any remedy.

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 disposed of in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of June 1983.