

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25056  
Docket Number MW-24000

Herbert Fishgold, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it laid off Messrs. A. B. Fails, C. E. Beamon, G. S. Bond, G. C. Brumfield, D. W. Chambers and D. R. Christian, Jr. without five (5) days' advance notice (System File C#77/D-2353).

(2) The claimants 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: Claimants are employed by the Carrier as laborers and were regularly assigned as such to either Section Gang 4403, 4405, or 4406 headquartered at Milwaukee, Wisconsin. On May 21, 1979, the Claimants were notified that they were laid off at the close of work that day.

The Organization contends that they were not given the required five (5) working days' advance notice of force reduction, and that under Rule 9(d) of the Agreement the Carrier was required to give "not less than five (5) working days' advance notice ... to regularly assigned employees" before they could be laid off. It further contends employees in question were regularly assigned, and the only exceptions to Rule 9(d), none of which were applicable here, are clearly set forth therein, as modified by Article VI of the February 10, 1971 National Agreement.

The Carrier's position is clearly stated in two separate letters to the General Chairman in response to the claim herein. In the first letter, from Mr. Howard, dated August 20, 1979, it is stated:

"Investigation of this claim discloses these employees were called back on a temporary basis only. At the time in question these positions were not bulletined nor were they assigned positions. Rule 9 was not violated as it requires five day notice to be given to regularly assigned employees and these gentlemen were not under this classification."

In his letter of November 15, 1979, Mr. Merritt, Assistant Vice President - Labor Relations, concluded:

"... the employees in question were filling temporary positions, for a period of less than 30 days. They were not filling regular positions, were not regularly assigned, and therefore a 5-day notice was not necessary prior to the abolishment of their positions. The positions in question were not bulletined positions, nor did they exist for 30 days."

This Board is faced with determining the question of whether the Claimants were, in fact, "regularly assigned employees" at the time of their layoff on May 21, 1979, in order to further determine whether Rule 9(d) was violated. However, based upon the record presented, the Board finds there is a lack of sufficient evidence so as to make such a decision. Accordingly, the claims must be dismissed.

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

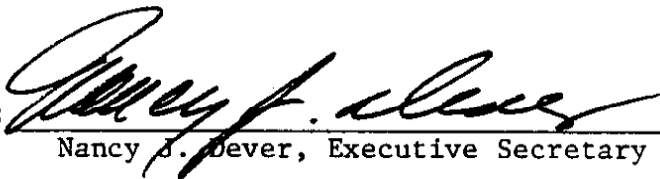
That the claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Dever, Executive Secretary

Dated at Chicago, Illinois, this 4th day of October, 1984.