

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27996
Docket No. MW-26471
89-3-85-3-212

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Maine Central 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. N. W. Cribby, Jr., B. R. Libby, E. L. Hayward, J. Johnson, Jr., W. L. Harris IV and M. S. Messer without benefit of five (5) work days' advance notice (Carrier's File MW-84-2).

(2) The claimants shall each be allowed eight (8) hours of pay at their respective straight time rates because of the violation referred to in Part (1) hereof."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

At about 9:30 A.M. on Tuesday, October 18, 1983, Claimants, whose normal work day commenced at 7 A.M., were notified by hand-delivered notice that their crew, Extra Crew No. 1, headquartered at Rigby, Maine, would be abolished at the close of business on Monday, October 24, 1983.

Claimants each submitted a claim for eight (8) hours of pay for Tuesday, October 25, 1983, on grounds that Carrier had given them only four (4) working days' notice of force reduction, rather than the five (5) days' notice required under Article II, Rule 5(g):

"Regular employees on regular assigned work will be given five (5) working days' notice in advance of reduction in force. Regular employees are men who have worked more than thirty (30) consecutive workdays and have acquired seniority rating."

Carrier denied the claim on grounds that through "past practice," the Carrier "always" considered the day upon which notice was given as one of the five (5) days of the notice provisions of the Agreement.

This is not a case of first impression before this Board. So far as the record shows, the position advanced by Carrier in this case has never prevailed before this Board. The disposition in this case must conform with our findings in Third Division Award 21766:

"At 11:00 a.m. on Friday, May 9, 1975, the Carrier posted Bulletin No. 511 which advised that Claimant's position (Key punch Verify #143) would be abolished after working hours on Thursday, May 15, 1975. Claimant's assigned hours were 7:00 a.m. to 3:00 p.m.

Claimant asserts that Carrier did not give a full five (5) working day notice as required by the pertinent agreement.

Carrier concedes that 'five working days notice must be given,' but it contends that Friday, May 9, 1975 was one of those days. In other words, it asserts that the working day during which notice was given is properly included in computing the five (5) working days advance notice.

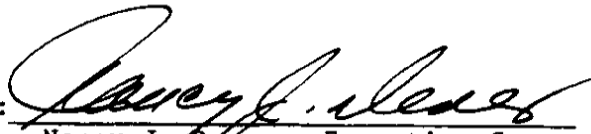
The Board has consistently ruled to the contrary. See, for example, Awards 14928, 15839, 15954 and 17219."

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1989.