

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Soo Line Railroad Company

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

(1) The Agreement was violated when, effective at the close of work on October 9, 1987, the Carrier abolished the position of Mr. L. W. Wayerski without benefit of five (5) working days' advance notice (System File R532 #0758W/800-20-95).

(2) As a consequence, of the violation mentioned in Part (1) above, Mr. L. W. Wayerski shall be allowed thirty-two (32) hours of pay at the straight time rate of the position he held October 9, 1987."

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.

As of October 11, 1987, the Carrier completed sale of a portion of trackage known as the Lake States Region to a new entity. On October 9, 1987, the Claimant and crew members were notified of the abolishment of their jobs as of October 15, 1987. This date was obviously selected to meet the requirements of Rule 12(d,) which reads as follows:

"RULE 12
EXERCISING SENIORITY - FORCE REDUCTION

(d) Not less than five (5) working days' advance notice will be given to regularly assigned employees,

not including casual employees or employees who are substituting for regularly assigned employees, whose positions are to be abolished before such reductions in force are made, except:"

Some Carrier employees accepted employment with the new owner. This included the Claimant, who resigned from the Carrier and commenced employment with the new Company on October 11. The Carrier failed to pay the Claimant for the four days' commencing October 11, which the Organization argues is due him under the October 9 notice and the provisions of Rule 12(d).

Two other employees similarly situated to the Claimant were paid for such days, despite accepting employment with the new owner. The Carrier contends that such payment was made in error. Employees not accepting such new employment were paid for the full notice period.

The Board finds that Rule 12 (d) is intended to provide notice (with work or pay) for a specific period. The Claimant, having resigned to accept new employment, was obviously not available to the Carrier during the notice period. Under usual circumstances, employees on termination notice can be or are required to work during such period. Here, the Carrier simply substituted pay for the same period. The Claimant, however, resigned during such period and is without standing to claim pay after such resignation.

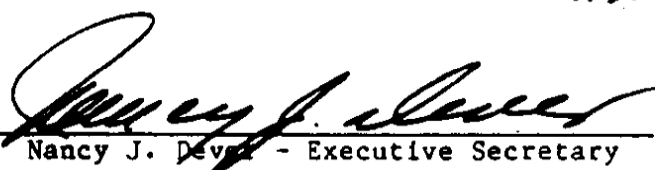
In view of this, the Board need not review the Carrier's argument that the Claimant had no employee standing to initiate a Claim under Rule 21.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1991.