

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29830
Docket No. MW-29666
93-3-91-3-3

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(CSX Transportation, Inc. (former Seaboard
(System Railroad)

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

- (1) The Carrier violated the Agreement when, on September 11, 1989, it abolished the position of assistant foreman on Force 5T39 without providing the required five (5) working days' advance notice [System File 89-62/12(90-73) SSY].
- (2) As a consequence of the above-referenced violation, Mr. J. R. Pate shall be compensated at the appropriate straight-time rate of pay for five (5) working days, i.e., forty (40) hours."

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 employee 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 the time of the incident at issue, Mr. T.A. Brown was the regularly assigned Assistant Foreman on Carrier's Force 5T39, headquartered at Brunswick, Georgia. Mr. Brown became ill in August 1989. As a result, a temporary vacancy occurred on his position. During the week ending September 1, 1989, Mr. R.W. Sanders worked the assignment, and during the week ending September 8, 1989, Mr. R. A. Thomas worked the assignment.

Also during the first week in September 1989, Claimant was displaced from his regular assignment. On or about September 7, 1989, Claimant notified the Roadmaster via telefax that he intended to displace junior employee R. A. Thomas effective September 11, 1989, in accordance with Rule 13, Section 4, of the Agreement between the Parties. Rule 13, Section 4 reads as follows:

"If a furloughed or displaced employee elects to displace a junior employee, he must notify the Division Engineer or Engineer of Bridges, as the case may be, before the change is made, giving the name of the employee to be displaced, and the date he will report. This procedure can, if necessary, be handled by telephone or other Carrier communication device in order that the employee to be displaced can be given as much advance notice as possible, but not less than one workday."

The Roadmaster attempted to respond to Claimant via telefax, but, failing that, instructed Foreman R. E. Kicklighter to inform Claimant that Carrier had elected not to continue filling Assistant Foreman Brown's position during his illness, and that Claimant should displace elsewhere. Mr. Kicklighter, a neighbor of Claimant's communicated the Roadmaster's message to Claimant on the evening of September 7, 1989. On November 7, 1989, the Organization submitted a claim alleging that the Carrier abolished the Assistant Foreman position without issuing a five day notice as required by Rule 13, Section 1:

"Five (5) working days' notice shall be given to employees affected before force reductions are made, with copy of notice to General Chairman, except as provided for in Article VI - EMERGENCY FORCE REDUCTION RULE, February 10, 1971 National Agreement:...."

It is the position of the Organization that the Carrier abolished the position Claimant intended to place himself on without the required five day advance notice as mandated by the Agreement. The Organization points out that the position was being filled after the incumbent vacated it due to illness. Moreover, it was not until Claimant notified Carrier that he wished to place himself on the position that Carrier determined the position would be "blanked." If the position was being filled and the Carrier wished to blank the position, it may not do so without the required advance notice to Claimant as mandated by Rule 13. Since no such notice was issued, Carrier was in violation of Rule 13, Section 1, and the claim should be sustained.

The Carrier maintains that, because Assistant Foreman Brown's position was being filled on a temporary basis pending his return to work, Rule 13 does not apply. Rather, Carrier determined that it was unnecessary to fill his assignment in his absence and elected to "blank" the position until he was able to resume his duties. Carrier concedes that Claimant was not given notice of the decision to "blank" the position, but contends that no notice was required, because the position was not abolished. Therefore, the instant claim should be denied.

There is no support on the record before this Board to support the Organization's position in this matter. The provision of Rule 13, Section 1, requiring five days' notice to affected employees clearly refers to reductions in force; i.e., positions being abolished. Carrier maintained without contradiction that the position at issue was not being abolished. Rather, it was "blanked" pending return of the regular incumbent following his sick leave, because Carrier had determined that it was unnecessary to staff the position in his absence. Election not to fill a position pending a regularly assigned incumbent's temporary absence does not, under the provisions of the Agreement between these Parties, constitute a "reduction in force" under Rule 13, Section 1. In light of the Organization's failure to demonstrate to this Board that the position at issue was in fact abolished, and therefore, covered by the notice provision in Rule 13, Section 1, we have no alternative but to deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.