

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31080  
Docket No. MW-30683  
95-3-92-3-468

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Consolidated Rail Corporation

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

(1) The Carrier violated the Agreement when, effective November 15, 1990, it abolished the positions on the mini tie gang, working on the S. Tier, without proper advance notice as contemplated by Rule 6 (System Docket MW-1878).

(2) As a consequence of the aforesaid violation, Claimants R. Johnson, J. Fahl, D. Lisi, R. Allen, K. Porter, C. Rudloff, R. Rudloff, C. Brown, P. Baker, J. Hippert, J. Plummer, C. Coombs, L. Piscetilli, W. Mix, J. Henshaw, C. Carson, M. Hovey, L. Lane, V. Woytowicz, C. Hilliar, D. Delamater, J. Okonsky, R. Gleason, R. Fox, J. O'Hara, J. Gunn, W. Cusson and A. Jellison shall each be allowed forty (40) hours of pay at their respective pro rata rates."

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.

On November 1, 1990, the Claimants were verbally notified that their positions would be abolished at the end of their tours of duty on November 8, 1990. A written notice was posted on or about November 5, 1990. On November 8, 1990, after realizing that the job that the Claimants were working on was not complete, the Carrier informed the Claimants that they would be working on a day-to-day basis until the job was finished.

On January 12, 1991, the Organization submitted the instant claim contending that the Carrier violated Rule 6 by failing to give the Claimants five days notice and by holding them on their positions past the announced abolishment date.

This Board has reviewed the record in this case and we find that the Organization has not met its burden of proof that the Carrier violated Rule 6 when it abolished the positions on the mini tie gang in November of 1990.

The record reveals that on November 1, 1990, the Claimants were verbally advised that their positions were to be abolished on November 8, 1990. A written notice was issued to the Claimants on November 5, 1990. On November 8, 1990, the Claimants were advised that if they wanted to, they could continue until the project was completed. On November 14, 1990, the Claimants were advised that the project would be completed on November 15, 1990, and the positions would be finally abolished.

Rule 6 states the following:

"(a) Notice of force reduction or abolishment of positions shall be given not less than five (5) working days (four (4) working days for four (4) day gangs) in advance and bulletin shall be promptly posted identifying the positions to be abolished...."

As stated above, the record supports the Carrier's position that notice of the force reduction or the abolishment of positions was given not less than five working days in advance and a bulletin was promptly posted. Consequently, this Board must find that the Carrier complied with the requirements of Rule 6(a).

The Organization contends that since the Carrier did not abolish the position on the exact date that the notice indicated, that is, November 8, 1990, that the notice was invalidated and a new notice was required under Rule 6. However, this Board finds that there is nothing in Rule 6 which requires that a second notice be issued if the abolishment does not take place on the exact date that it was intended. Moreover, there is no evidence in the record that the Claimants were required to continue to work on their old jobs after November 8, 1990.

Since the Organization bears the burden of proof in this type of case and it has not met that burden, this claim must be denied.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.