

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31304
Docket No. MW-30975
95-3-92-3-927

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 Employes
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(Duluth, Missabe and Iron Range Railway Company

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

- (1) The Agreement was violated when the Carrier improperly abolished six (6) machine operator positions, headquartered at Proctor, Minnesota within notices dated August 19, 23, 30 and September 4, 1991 (Claim No. 20-91).
- (2) As a consequence of the violation referred to in Part (1) above, Machine Operators J. Sawyer, J. Herendeen, C. Brodin, and H. Swanson shall each be compensated eight (8) hours' pay, at the machine operator's rate, for each work day they were improperly removed from their positions, beginning on the effective date of the improper abolishment (September 16, 1991) and continuing."

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 this dispute arose, Claimants were assigned as machine operators with headquarters at Proctor, Minnesota. By notice dated August 19, 1991, Claimants were notified that their positions were to be abolished effective August 26, 1991. Following several postponements of the abolishment, Carrier abolished Claimants' positions effective September 16, 1991. In its notice of abolishment, Carrier stated "This is not a Force Reduction; employees are not laid off and are expected to exercise their seniority, immediately." Italics in original.

By letter of September 25, 1991, the Organization filed a claim alleging that Carrier had violated Rule 5 - Force Reduction of the applicable agreement. Rule 5 reads in pertinent part as follows:

"(a) When forces are reduced, the senior employees in the respective groups and gangs will be retained, and those affected either by being laid off or displaced will have the right of exercising their seniority rights under the following conditions.

* * *

(e) Seniority rights when exercised in displacing other employees under this rule must be exercised within ten (10) calendar days after the employees are laid off, or they will forfeit all rights to displace other employees under such force reduction."

Carrier denied the claim and referred the Organization to a special agreement between the Parties, dated September 9, 1991. That agreement read in part:

"... Rule 5(e) means that employees who elect to displace other employees may take up to ten days to do so, and in the meantime, they may remain away from service. This applies in a force re-arrangement as well as in a force reduction."

As in Third Division Award 29142, involving the same parties, this Board finds that the Organization has offered no evidence to contradict Carrier's assertion that it suffered no reduction in force, but was simply rearranging its current work force to meet changing work requirements.

It is unrefuted on this record that Carrier gave Claimants ample notice of the abolishment of their positions. Nor is there any evidence to support the Organization's claim for eight (8) hours' pay for each work day Claimants were "improperly removed from their positions." It is also undisputed on this record that Claimants were afforded the opportunity, as provided in Rule 5(e) and the special Agreement, to take ten days to exercise their seniority once their positions were abolished. Three of the four Claimants took at least one day off without pay prior to assuming their new assignments.

The essence of the claim in this case is that Carrier improperly abolished Claimants' positions in the course of a force reduction. Since the Organization has failed to meet the prima facie burden of showing that Carrier in fact engaged in a force reduction the instant claim must be denied. See also, Third Division Award 14701.

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 19th day of January 1996.