

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31753
Docket No. MW-30695
96-3-92-3-477**

The Third Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when, effective October 31, 1990, it abolished positions on Orgotherm Welding Gangs 1447 and 1448 without proper advance notice as contemplated by Rule 6 (System Docket MW-1907).**
- (2) The Carrier violated the agreement when, effective November 21, 1990, it abolished positions held by Messrs. S. E. Hazel and S. W. Veigel without proper advance notice as contemplated by Rule 6.**
- (3) The Carrier violated the agreement when, effective November 8, 1990, it abolished positions held by Messrs. D. L. Minich, T. A. Houser, J. L. Robertson, T. L. Putman, C. Thompson, A. O. Putman, D. L. Shelly, A. Johnson, D. Perry, R. B. Harwick, R. D. Webb, J. A. McQuillen, J. P. Gee, R. W. Compton and C. N. Grimm without proper advance notice as contemplated by Rule 6.**
- (4) As a consequence of the violation in Part (1) above, Claimants J. E. Comber, D. A. Glista, M. R. Luteran, G. Gonzalez and J. F. O'Brien shall each be allowed forty (40) hours of pay at the respective pro rata rates.**
- (5) As a consequence of the violation in Part (2) above, Claimants S. E. Hazel and S. W. Veigel shall each be allowed forty (40) hours of pay at the respective pro rata rates.**

- (6) As a consequence of the violations in Part (3) above, Claimants D. L. Minich, T. A. Houser, J. L. Robertson, T. L. Putman, C. Thompson, A. O. Putman, D. L. Shelly, A. Johnson, D. Perry, R. B. Harwick, R. D. Webb, J. A. McQuillen, J. P. Gee, R. W. Compton and C. N. Grimm shall each be allowed forty (40) hours of pay at the 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 were given due notice of hearing thereon.

This case involves the consolidation of three separate claims alleging the same factual circumstances in support of the alleged rule violation. In all circumstances alleged in each of the three separate claims, the Carrier supposedly gave a verbal notification to the respective Claimants that their positions would be abolished and followed up the verbal notice by posting a bulletin confirming the abolishment either prior to or on the date the abolishment became effective.

The Organization views the Carrier's method of verbally notifying the Claimant of the abolishment of his position and the subsequent posting the confirming bulletin on the date of abolishment as a violation of Rule 6. Rule 6, in essence, requires:

"Rule 6 Reducing Forces

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

Based upon the Organization's reading of the requirements of Rule 6, on November 16, 1990, November 19, 1990 and January 16, 1991 the Organization submitted a claim encompassing the three consolidated cases which allege that the Carrier violated Rule 6 when it failed to comply with the prompt posting of the abolishment notices.

According to the Organization's theory of claim, Rule 6 requires two specific actions when the Carrier plans a force reduction. First, the Carrier is required to give notice to the employees within the applicable time limits. Second, the Carrier is required to promptly post the abolishment notices in bulletin form as required by the rule.

According to the Organization, merely posting the bulletin on the date of the abolishment fails to comply with the second tier of prompt posting of the abolishment bulletin. The Organization, in its Submission, admits that verbal notification can be a proper method for the Carrier to comply with the five and four day advance notice requirements only if the bulletins are promptly posted thereafter.

In this situation, the Organization contends that the Carrier failed to establish on the record that it, indeed, had given the respective Claimants verbal notice of abolishment in accordance with the five and four day requirements found in Rule 6. The Organization also finds a violation since in its view, the Carrier failed to promptly post the bulletins. Therefore, the Organization urges us to pay the claims as submitted.

The Carrier reads its notification requirements as enunciated in Rule 6 differently. According to the Carrier, the rule does not oblige management to provide a written notification five and four days prior to abolishing a position. The Carrier also argues that it promptly posted the bulletin in accordance with the rule since all abolishment bulletins were posted on or before the actual effective date of the force reductions. Therefore, the Carrier argues that the Organization failed to prove a rule violation.

We find, after fully considering the parties' arguments and closely scrutinizing the time notification requirements found in Rule 6, that the Organization failed its burden of proving a rule violation. The Carrier correctly argues that Rule 6 does not require a written notification within the five and four day time limits. This position was conceded by the Organization in its Submission.

The next question is whether the Carrier promptly posted the abolishment bulletins. The purpose of posting abolishment bulletins is to give the affected employees a confirmation that their positions have actually been eliminated. By posting the bulletins prior to or on the effective date of abolishment, the Carrier satisfies this requirement. Given that the rule merely requires a prompt posting, we cannot say that the Carrier failed to promptly post the bulletin if it did so prior to or on the effective date of the force reduction.

In *Special Board of Adjustment No. 1016, Award 80*, the Board found a violation of the prompt posting requirement of Rule 6 when the Carrier failed to post the abolishment bulletin by the effective date of the force reduction. In that case, the claim was sustained.

This case is distinguishable with the facts at bar. In this instance, for all three claims, the Carrier posted the force reduction bulletin on or before the effective date thereby, providing the affected employees with written confirmation of the verbal advice that they had been given by management that their positions would be eliminated.

Furthermore, we discount the Organization's argument that the Carrier was obliged to affirmatively prove that it had given verbal notification to all Claimants. A review of the claims indicates that the Organization merely took issue with the fact the Carrier failed to promptly post the abolishment bulletins. The claims make no mention of the Carrier's failure to give verbal notice within the appropriate time periods.

Therefore, since the claims as presented frames the crux of the issue and since we find that the Carrier promptly posted the bulletins in accordance with Rule 6, we must deny this claim. Since we are denying this claim, we will not consider the parties' respective arguments concerning the appropriateness of damages.

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 24th day of October 1996.