

Award No. 32916
Docket No. MW-31888
98-3-94-3-215

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

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when, on Friday, March 27, 1992, it abolished the positions of the Maintenance of Way employees listed below, who were assigned to Force 6A17, without providing the required five (5) working days' advance notice and without notifying the General Chairman [System File 92-101/12(92-970) SSY].**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants listed below shall each be compensated at their appropriate Track Subdepartment, Group A pro-rata rates of pay for all time denied them as a result of the Carrier's action.**

R. M. Spires
M. E. Lominack
B. Franklin
F. L. Lewis
J. Davis
E. Williams, Jr.
W. B. Sermon
S. D. McMurray

**W. Carter
H. Long
J. L. Patterson
C. Cook
W. L. Yarber
S. A. Williams
R. G. Pike"**

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.

Prior to the events at issue in this dispute, Claimants held positions on Force 6A17, working Monday through Thursday with Friday, Saturday and Sunday as assigned rest days.

As set forth in the claim, on March 17, 1992, the Carrier advised Claimants that their positions on Force 6A17 would be abolished effective March 24, 1992. On March 18, 1992, Claimants were notified by the Carrier in writing of that intent. However, at that time, the General Chairman was not given a copy of the notice. On March 25, 1992, Claimants were told they could work the balance of the week (March 25 - March 27, 1992) on a temporary basis on another Roadmaster's territory. In the days following the abolishment of Force 6A17, all Claimants with the exception of one (who went on vacation) immediately found employment on other forces.

Rule 13, Section 1 states the following:

"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."

Contrary to the Organization's assertion, the Rule does not require written notice to the employees (although such written notice was given). However, because the Rule requires a "copy of notice to General Chairman", the Rule does require written notice to the Organization. The record does not sufficiently show that the Carrier provided the

General Chairman with a copy of the abolishment notice in a timely fashion as required. To that extent, the claim shall be sustained. As a remedy, the Carrier is directed to henceforth comply with that aspect of the Rule.

The evidence also shows that after their positions were abolished at the close of work on March 24, 1992, temporary positions on another Roadmaster's territory were made available and the record shows that in the days following the abolishment of Force 6A17 all Claimants, with the exception of one who went on vacation, immediately found employment. We do not view the offering of such work to amount to an extension of the abolishment date of Force 6A17 requiring a new notice. But, even assuming a violation of the notification Rule, there is no relief available for Claimants. See Third Division Award 31032 ("... [B]ecause this Board cannot impose a penalty, that pay entitlement [for a notice short of the required five days] must be offset by any amounts earned by Claimants in the Carrier's service during the period for which no notice was given.") Claimants were given the opportunity to work after their jobs were abolished for sufficient periods to make their claim moot.

To the limited extent set forth above, the claim shall be sustained. Aside from directions to comply with the Rule in the future, no other relief is required.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of November 1998.