

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33968
Docket No. CL-34188
00-3-97-3-747**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Springfield Terminal Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11871) that:

- (a) On behalf of Mr. D. Deans, TSR, Waterville, ME. Claim is for eight hours at the rate of time and one-half for July 15, 1996.
- (b) The Carrier violated the Agreement when it did not give the proper notice of seven calendar days in abolishment of position MC-12, owned by Ms. J. Perro. Carrier also did not give proper notice to this Organization concerning this abolishment.”

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.

On July 9, 1996, Transportation Services Representative J. Perro retired. At the time of her retirement, she held Position MC No. 12. By notice dated July 10, 1996

addressed to "all concerned" with instructions to "post at all locations," the Carrier issued an Abolishment Notice and abolished Position MC No. 12 effective close of work on July 17, 1996. The Notice indicates that a copy was provided to the District Chairman. Claims were filed on behalf of the Claimant and other employees protesting the Carrier's alleged failure to give proper Notice of the Abolishment as required by Rule 13. The claims of the other employees were held in abeyance pending the outcome of this matter.

The relevant Rules provide as follows:

"RULE 13. Abolishment of Positions

- 13.1 When positions covered by this Agreement are to be abolished, the Carrier will provide at least seven (7) calendar days' advance notice to the Employees affected with a copy to the District Chairman.
- 13.2 A list of all positions to be abolished, which will include the names of the Employees filling the positions to be abolished, will be posted on all bulletin boards and a copy furnished to the District and General Chairmen.
- * * *
- 13.5 Employees whose positions are abolished will exercise their seniority rights in accordance with Rule 14 of this Agreement; other Employees affected will exercise seniority in the same manner."

When abolishing a position, Rule 13.1 obligates the Carrier to "... provide at least seven (7) calendar days' advance notice to the Employees affected with a copy to the District Chairman." There are two components to this case: (1) the Carrier's obligation to give notice to the "[e]mployees affected" and (2) the Carrier's obligation to provide a "copy to the District Chairman." The other factor in this case is that the burden rests with the Organization to demonstrate a Rule violation.

As a preliminary matter, as far as Notices of Abolishment are concerned, the governing Rule in this case is Rule 13.1. That is the Rule that specifies a time within which a Notice of Abolishment is to be given to "employees [a]ffected." Rule 13.2 has

no specified time limits and is a general advance posting requirement for "all positions to be abolished."

First, with respect to the Carrier's obligation to give notice to the "[e]mployees affected," the Organization has not demonstrated that there were "[e]mployees affected" who were entitled to receive advance Notice of the Abolishment of Position MC No. 12. The only potential "[e]mployee affected" was J. Perro — the incumbent on Position MC No. 12. But she retired on July 9, 1996 and advance notice to her that her position was going to be abolished a day after her retirement would have been of little consequence to her. Having retired, she was not going to exercise seniority rights under Rules 13.5 and 14 as a result of the abolishment of her former position. Because she was not going to displace other employees, there were no other individuals who would in turn need to exercise their seniority rights as displacements. As the Organization points out, all of this could have been avoided had the Carrier given notice on July 2, 1996 that Perro's position was going to be abolished after her last day of work on July 9, 1996. But the Organization has not shown how, in this unique situation, the Claimant was an "[e]mployee affected" by the abolishment of Perro's job and thus was entitled to advance notice under Rule 13.1. This portion of the claim is denied.

Second, with respect to the Carrier's obligation to send a "copy to the District Chairman," the case as presented by the parties is somewhat confusing. On the property, the Organization claimed that the Carrier "also did not give proper Notice to this Organization." In its Submission, the Organization asserts that the Notice did not address the District Chairman. But the Notice indicates that a copy was provided to the District Chairman. Further, according to the Carrier's Submission, although the Notice was dated July 10, 1996 and indicated that the District Chairmen was provided a copy, the Organization was not furnished a copy of the bulletin until August 15, 1996 — over one month after the July 10, 1996 announcement that Position MC No. 12 was going to be abolished effective July 17, 1996.

In any event, the Carrier asserts that there is no time limit under Rule 13 on its obligation to give Notice of an Abolishment to the District Chairman. We disagree. Under the Carrier's theory, the Carrier could wait indefinitely to inform the District Chairman of an abolishment. The purpose of notice to the District Chairman permits the Organization to monitor the workplace and to provide assistance to employees whose positions are abolished so that they can exercise their seniority rights and to further assist employees who may desire to fill vacancies opened by employees who leave the

Carrier's employ, such as the retiring Perro. The Carrier's interpretation, which would permit long delays in notifying the District Chairman, seriously undermines that function. The Carrier's interpretation that there is no time obligation for it to provide a copy of the Notice of Abolishment to the District Chairman would render the language in Rule 13.1 requiring a copy of the Notice of Abolishment to be provided to the District Chairman meaningless. Contract language must be construed to avoid meaningless interpretations.

While there were no consequences to the Carrier's failure to give notice to Perro or to the Claimant that Position MC No. 12 was going to be abolished after Perro's retirement, the failure to give timely Notice of the Abolishment to the District Chairman had potential consequences. In anticipation of Perro's retirement, employees may have desired to fill what they perceived as a permanent vacant position that would, in turn, have opened a series of vacancies as the positions left vacant were backfilled. In terms of the Organization's need to monitor the workplace and assist employees, the Organization, through the District Chairman, needed to know in a timely fashion that after Perro's retirement her position was not going to be vacant but rather was going to be abolished so that advice could be given to employees who may have desired to attempt to fill what was going to be an abolished position. Under Rule 13.1, copy of the Notice of job Abolishment to the District Chairman must be provided at the same time the notice is required to be given to the affected employees.

With respect to a remedy, because the Claimant was not an "[e]mployee affected," the Claimant is not entitled to affirmative relief. However, the Carrier would be well advised to henceforth comply with the terms of Rule 13.1 and simultaneously notify the District Chairman of jobs abolished when "[e]mployees affected" are entitled to such notification.

AWARD

Claim sustained in accordance with the Findings.

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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 28th day of March, 2000.