

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41588
Docket No. MW-41650
13-3-NRAB-00003-100334**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier did not properly provide an abolishment notice, as required by Rule 21, to Track Patrolman S. Acosta (System File D-09-28/1521525).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Acosta shall ‘. . . now be compensated, at his respective rate(s) of pay for Track Patrol Foreman (\$21.89 per hour) for May 11, 12, 13, 14, 2009, a total of thirty-two (32) hours, for a total of \$700.48.’”**

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.

The Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties' Agreement when it failed to properly provide a five-working-day abolishment notice to the Claimant.

The Organization contends that the claim should be sustained in its entirety because (1) the Carrier failed to properly afford the Claimant a five-working-day notice prior to abolishing his assignment (2) the Carrier's defenses are disingenuous and without merit, and (3) the Claimant is entitled to the requested remedy. The Carrier counters that the claim should be denied in its entirety because (1) the Claimant was provided a proper verbal abolishment notice (2) the Claimant was offered a work opportunity on each of the claim dates (3) it was the Claimant who did not report to work on these dates, and (4) the Organization failed to show how the Agreement was allegedly violated.

The Board carefully reviewed the record evidence and finds that the Organization failed to meet its burden to prove that the Carrier violated the Agreement when it allegedly did not provide an abolishment notice to the Claimant as required by Rule 21.

The record reveals that the Claimant began service with the Carrier in May 2000 and became a Foreman in June 2006. On May 7, 2009, the Claimant was awarded a Track Patrol Foreman position. That position was scheduled to commence working on May 11, 2009. The Carrier determined that it did not need the position, and the position was abolished effective May 15, 2009. The record also reveals that the Claimant contacted the Carrier on the first day of that new position (May 11, 2009) and stated that he was not properly rested and that he would not be able to report that day. The Manager informed the Claimant that day that the position was being abolished and that there was other work that the Claimant could perform while he was waiting for the abolishment period to end. The Claimant did not report for service after he was told that.

The record reveals that the Claimant had a work opportunity on May 11, 12, 13, and 14, 2009. The Claimant was verbally informed of the abolishment of the position. The claim is only seeking wages through May 14, 2009.

Because the Claimant had work opportunities available to him on the dates in question and he failed to report for service and take advantage of them, the Board has no choice other than to deny the claim.

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 18th day of March 2013.