Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 45343
Docket No. SG-48362
25-3-NRAB-00003-240054

The Third Division consisted of the regular members and in addition Referee Michael D. Phillips when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Canadian Pacific Railway

STATEMENT OF CLAIM:

"Claim on behalf of Signalman J. Olson, for 50 hours at his respective straight-time rate of pay; account, Carrie violated the Agreement, particularly Rule 5, when, on August 1, 2022, it removed the Claimant from his awarded position prior to issuing an abolishment notice; and subsequently required other employees to perform duties of that position, thereby causing the Claimant lost work opportunities. Carrier's File No. 2023-30416, General Chairman's File No. 2023-30416, BRS File Case No. 6493, NMB Code No. 300 - Contract Rules: Assignments/Bulletins."

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.

Based on the record provided to us, it appears that the parties agree on the basic facts of the instant case, as follows. On May 3, 2022, Claimant J. Olson was awarded and began working on a temporary Signalman position, MWSURFMN6. On August 1,

2022, the Claimant was verbally instructed to report back to his permanent Signalman position, effective that day.

On August 4, 2022, the Carrier issued a written abolishment notice for position MWSURFMN6, with the Claimant listed as the affected employee. Between August 1, 2022, and August 10, 2022, the Carrier instructed two other employees to perform the duties associated with the temporary position.

The Organization initiated the instant claim on the Claimant's behalf, contending that the Carrier violated the applicable agreement, specifically Rule 5 – Reduction and Restoration of Forces, when the Claimant was not given five working days' notice that the temporary position had been abolished. The claim sought fifty (50) hours' pay, equaling the time worked on the position by the other employees between August 1 and August 10, 2022.

The Carrier denied the claim as being excessive. It stated that the Claimant was working in the same classification, with the same rate of pay, and it denied that there was a basis for double pay when the work was performed by other qualified employees as needed on less than a full-time basis. The Carrier stated that the Claimant had not lost any wages nor was he placed in a worse position account of the inadvertent oversite of issuing an abolishment notice. It stated that the Claimant was notified of the abolishment on or before August 1, as he was working his permanent position.

The Organization submitted an appeal, denying that the claim was excessive. It stated that the claim covered the hours worked by other than the Claimant on a position he had been awarded by bulletin, and it denied that the Claimant was notified of the abolishment on or before August 1, but that he was merely following directions to return to a Crew Signalman position to avoid insubordination charges. The Organization states that the alleged "inadvertent oversight" was not a sufficient excuse for the Carrier's failure to abide by the agreement requirement to properly issue an abolishment notice pursuant to Rule 5.

The Carrier denied the appeal, again stating that the Claimant had been advised on August 1 to report to his regular assignment. It asserted that there is no language in the agreement requiring abolishment notices to be provided in writing. The Carrier also contended that the Claimant was used to fill another assignment in accordance with Article 23(a) of the agreement, and that he was not due additional compensation. It asserted that the Organization therefore had not met its burden of proof to demonstrate an agreement violation.

The parties discussed the matter in conference, but they were unable to resolve it. The matter now comes to us for resolution.

The parties' positions here are essentially the same as those described above. The Organization reiterates its position that the Carrier violated Rule 5 when the Claimant did not receive notice five days in advance of the effective date of the abolishment. It states that the Carrier's position that the Claimant was instructed to return to his original assignment on August 1 is an admission that the requisite notice was not provided. It also avers that the Carrier's position conflicts with the August 4, 2022, written abolishment notice which stated that the abolishment was effective August 11, 2022. The Organization questions why, if the Carrier believed the verbal notification was sufficient, it subsequently issued the written notice.

The Organization cites a prior award which found that a Carrier's failure to provide five working days' notice of a job abolishment was a violation of a similar agreement. It states that, while that case resulted in an award of only nominal damages, this case is different in that Rule 39 provides a remedy for the misapplication and violation of the agreement. The Organization concludes that the alleged violation has been proven, that the Claimant is entitled to monetary compensation for the work that belonged to him, and it requests that the claim be sustained.

The Carrier maintains its position that the Organization has not met its burden of proving a violation of Rule 5. It reiterates its stance that there is no evidence that the Claimant lost any wages or was placed in a worse position as a result of being required to work his permanent position. The Carrier also argues that, after the Claimant was verbally advised that his temporary position was abolished on August 1, he was properly used on another assignment and paid the highest rate according to Article 23(a). The Carrier requests that the claim be denied.

We have carefully reviewed the record, including the on-property correspondence, as well as the parties' citations of authority, and we find that the Organization has met its burden of establishing a violation of the cited agreement provisions. Even if the Carrier is correct that there is no requirement that an abolishment notice be in writing, the record reflects that the Claimant was required to return to his permanent position immediately on August 1, 2022, with no five-day advance notice. We also note that the Carrier's position in that regard is contradicted by the fact that it subsequently issued a written abolishment notice for the position.

The real question in our view involves the remedy. The Carrier's position is essentially "no harm, no foul," as the Claimant continued to work his regular position throughout the period in question. The Organization, on the other hand, asserts that a remedy must be afforded to properly police the agreement and to provide a disincentive to the Carrier's violation of the agreement.

As noted above, the award relied on by the Organization, Third Division Award No. 14920, awarded only nominal damages of one dollar. The Board did so based on its determination that, while the abolishment rule had been violated, it had no power to assess a penalty without specific provisions in the agreement, that recovery for a violation is limited to actual monetary loss, and that absent proof of actual loss, recovery is limited to nominal damages.

The Organization asserts before us, however, that this case is different in that Rule 39 – Miscellaneous, provides for a remedy for agreement violations. On that point, we observe that no mention of Rule 39 was made on the property, and it is well established that we will not consider matters not raised below. We also note the rule only applies to an employee who suffers a loss of earnings because of an agreement violation, and we do not find that such a loss was established here.

The case described above is the only award authority cited to us by either party. It involves what we believe are fairly similar circumstances, in that an agreement violation was proven, but that there was no actual wage loss proven. While we are not necessarily convinced by the award's broad pronouncement about limitations on damage awards, especially considering the many cases which have awarded sums such as basic day payments and the like which are not actually tied to a proven monetary loss, we have been offered no authority for the proposition that the Claimant is entitled to full pay for the temporary job in addition to the pay he received for working his permanent assignment.

On the specific record presented to us, we find that the Claimant is entitled to nominal damages. We note that the one-dollar award in Third Division Award No. 14920 was rendered over sixty years ago, and we believe that a higher sum for nominal damages is appropriate now. We find that an award of one hour's straight time pay is an appropriate sum here.

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 31st day of October 2024.