

AWARD NO. 3
CASE NO. 3

PUBLIC LAW BOARD NO. 4604

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

Claimant R. W. McIntosh, ID 187155, be paid 40 hours straight time at Tamper Liner's rate of pay. Account of not receiving an abolishment notice under Rule 21(b) of the October 1, 1973 Agreement between the two parties.

OPINION OF BOARD

Claimant was assigned as a tamper liner on Gang 6C34. The parties dispute whether Claimant was properly notified of the abolishment of Claimant's gang in October 1987.

Rule 21(b) states:

Five (5) working days' notice will be given to men affected before the reductions are made, this five (5) working days' notice not to apply when immediate unforeseen reductions are necessary account of inclement weather. It is understood, however, that the five (5) days' notice will be a written notice to each individual involved in a particular force reduction. It will not be necessary, however, to give this five (5) days' notice to track department repairmen if they are serving on temporary vacancies if less than twenty-five (25) working days.

In further support of the Organization's argument that Claimant did not receive proper notice under the above rule, the Organization cites us to the form used by the Carrier for notification. That form states:

Dear Sir:

Effective end of work _____ the position of
_____ occupied by you will be abolished.

This will serve as your five (5) working days notice in accordance with the MofW Agreement. Should you desire to exercise displacement rights, notify the Division Engineer's office where you will roll, and give gang number, and your last occupation before being cut off. If you do not exercise your displacement rights, you must file your address, in writing

within 10 days, as prescribed by Section (g) of Rule 21, in order to retain your seniority.

You will kindly acknowledge copy of this cut-off notice by placing your own personal signature and date received on this notice sent you in duplicate.

/s/ M. Dobbs
Division Engineer

Acknowledgment

I understood the above.

Signature

In this case, Rule 21(b) required that a five day written notice be given to Claimant. In accord with the the notice requirements (and in order to keep a record of its compliance with the notification requirements), the Carrier has promulgated a form giving the notice and requiring the affected employee's signature acknowledging receipt of the notice. Here, Claimant contends that he did not receive the written notice. If written notice was given, as asserted by the Carrier, then the signed form by Claimant should have been readily available to the Carrier. That form has not been produced in this record. We must therefore conclude as argued by the Organization that this record sufficiently demonstrates that no written notice was given to Claimant as required by the rule.

In light of the lack of Claimant's signed form in this record, the fact that the Carrier asserts that the whole gang was notified and no one else complained does not change the result. Putting aside the question of how many employees were on the gang (a fact disputed by the parties), Rule 21(b) requires "*written notice to each individual* involved in a particular force reduction." [Emphasis added].

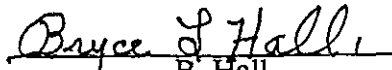
In light of the above, we need not address the Organization's argument that the Carrier did not respond to the Claim in a timely fashion.

AWARD

Claim sustained.


Edwin H. Benn
Neutral Member


L. Womble
Carrier Member


B. Hall
Organization Member

Jacksonville, Florida
February 24, 1989