

PUBLIC LAW BOARD NO. 2452

PARTIES  
TO  
DISPUTE: Brotherhood of Maintenance of Way Employees  
  
and  
  
Western Maryland Railway Co.

STATEMENT  
OF CLAIM: Claim on behalf of the following M of W employes  
for five (5) days' pay each account Carrier's  
failure to serve them a five working day notice  
prior to the abolishment of their positions:

J. H. Snyder	Trackman	W. L. Mayhew	Trackman
E. W. Morris	Chauffeur	D. H. Shaffer	Trackman
C. L. Conrad	Trackman	R. W. Wilfong	Trackman
C. L. Nelson	Trackman	R. M. Cost	Trackman
T. R. Fitzwater	Trackman	R. W. Hamrick	Trackman
H. L. Broughton	Chauffeur	C. H. Merritt	Trackman
W. W. Currence	Trackman	J. A. Newlon	Trackman
W. E. Morgan	Trackman	T. L. Bodkins	Trackman
R. N. Chenoweth	Trackman		

FINDINGS: By reason of the Agreement dated June 14, 1979, and  
upon the whole record and all the evidence, the Board  
finds that the parties herein are employe and carrier within the  
meaning of the Railway Labor Act, as amended, and that it has  
jurisdiction.

The conference issue raised by the Employees is  
similar to the same issue raised in Docket No. 2 and fully  
discussed in Award No. 2. For the reasons stated in Award No. 2,  
the issue of conference is resolved in favor of the Carrier.

Rule 3 of the Agreement provides, in part, as follows:

(f) FORCE REDUCTION

(Effective July 16, 1962) Gangs will not be laid off for short periods but in lieu thereof, junior men will be laid off. Not less than five (5) working days' advance notice will be given to regularly assigned employees or employees who are substituting for regularly assigned employees, who are subject to the rules of the existing collective agreement whose positions are to be made abolished before such reductions in force are made, except as provided in Article VI of the Agreement of February 10, 1971 (Rule 4).

Rule 4 of that Agreement reads as follows:

ABOLISHING POSITIONS IN EMERGENCY

(As amended by the February 10, 1971 National Agreement)

Rule 4. (a) Rules, agreements or practices, however established, that require advance notice before positions are temporarily abolished or forces are temporarily reduced are hereby modified so as not to require advance notice where a suspension of an individual carrier's operations in whole or in part is due to a labor dispute between such carrier and any of its employees.

(b) Except as provided in paragraph (a) hereof, rules, agreements or practices, however established, that require advance notice to employees before temporarily abolishing positions or making temporary force reductions are hereby modified to eliminate any requirement for such notice under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire, or a labor dispute other than as defined in paragraph (a) hereof, provided that such conditions result in suspension of a carrier's operations in whole or in part. It is understood and agreed that such temporary force reductions will be confined solely to those work locations directly affected by

any suspension of operations. It is further understood and agreed that notwithstanding the foregoing, any employee who is affected by such an emergency force reduction and reports for work for his position without having been previously notified not to report, shall receive four hours' pay at the applicable rate for his position. If an employee works any portion of the day he will be paid in accordance with existing rules.

Carrier hauls coal from the mines within its territory. At midnight on December 6, 1977, the United Mine Workers went on strike. On Friday, December 9, 1977, Carrier advised the Claimants that due to the Miners' strike, their positions would be abolished effective with the close of business on Monday, December 12, 1977. On the same day - December 9, 1977 - Employees protested the abolishment and advised the Carrier that the emergency force reduction rule was not invoked within a reasonable time and that it was necessary for the Carrier to give the Claimant five working days advance notice under Rule 3(f). Carrier replied on December 13, 1977 that the positions were abolished under Rule 4. The claim was thereafter presented and processed. The issue is whether or not Carrier was obliged to abolish Claimants' positions under Rule 3.

The strike closed the mines. It did not, however, immediately stop the hauling of coal. Stockpiles of coal remained which were hauled away by trains operated by the Carrier. When all this stockpiled coal was loaded and carted away fewer trains operated. With fewer trains operating the road bed did not require as much active maintenance and repairs. It was then that the emergency triggered by the strike created an emergency within the meaning and intent of Rule 4. It was then that the Carrier abolished the positions occupied by the Claimants. When Rule 4 became operative, no five work day advance notice was required.

Since all these positions were abolished on December 12, 1977 and all Claimants except E. W. Morris were in furlough status on January 1, 1978, they are not entitled to holiday pay for that date under the National Holiday Agreement of August 21, 1954, as amended. Morris qualified and was allowed holiday pay for January 1, 1978.


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For all these reasons, the Board finds that the Carrier did not violate the Agreement and that there is no merit to the claim.

AWARD

Claim denied.

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DAVID DOLNICK, Chairman and Neutral Member

  
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W. C. COMISKEY, Carrier Member

  
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WILLIAM E. LA RUE, Employe Member

DATED: *April 16, 1980*