

PUBLIC LAW BOARD NO. 4104

Case No. 7

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way
Employees

vs.

Burlington Northern Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it laid off Machine Operators R.L. Frerking, J.L. Zarybnicky, M.E. Walters, D.D. Jones, S.K. Rieckman, G. Collier, W.J. Kreitman, S.W. Stoakes, R.P. Wittmuss, J.T. Poppas, K.P. Wittmuss, T.L. Wallman, J. Maloney, J.R. Theis, M.A. Roloff, D.L. Shamburg, S.L. Aver, L.J. Hamm, W.J. Hauck, H.E. Wendtlandt, G.R. Stall; Track Laborers R.J. Vlach, R.E. Rains, G.K. Bauer, O.F. McKinney, L.G. Peters, R.W. Dieatrick, L.C. Corter, D.M. Schmidt, D.L. Brass, R.J. Smith, D.L. Johnson and R.A. Schelbitzki, without benefit of five (5) working days' advance notice." (System File 8 Gr MWA 82-12-6B)

2. The Claimants shall each be allowed eight (8) hours of pay at their respective straight time rates because of the violation referred to in part (1) hereof.

OPINION OF BOARD: The relevant facts of this claim are not in dispute. Claimants were assigned to Tie Gang #1 at Table Rock, Nebraska, at the time this dispute arose. On September 24, 1982, Claimants were notified that their gang would be abolished at the close of shift on September 30, 1982.

As a result, the Organization filed this claim, seeking one day's pay for each Claimant. Carrier timely rejected it. Thereafter, the Organization advanced the claim to this Board for adjudication.

The Organization contends that Carrier failed to give five working days' notice of the gang's abolition, as required by Rule 8A of the Agreement. In its view, only four days working notice

(Monday, September 27 - Thursday September 30). Therefore, the Organization maintains that the claim must be sustained pursuant to the clear language of Rule 8A.

Carrier, however, asserts that five days' working notice was given. It points out that Claimants were notified, prior to the start of their shift on September 24, 1982, of the gang's abolition. Therefore, Carrier insists that September 24 must be counted as a day of notice, thereby producing five days' notice.

Carrier also asserts that the Organization did not appeal the claim from the property to this Board in a reasonable manner. Carrier points out that the Organization did not advance the claim until some three years after it was rejected on the property. Thus, Carrier submits, the claim must be rejected for this reason as well.

After a review of the record evidence, the Board is convinced that the claim must be denied. Rule 8A of the Agreement provides for five (5) working days notice in advance of a force reduction. Claimants were notified prior to the start of their shift on September 24, 1982 of the abolishment. As such, this date is counted as a working day to be included in the required five (5) days notice. Since Claimants did have September 24, 1982 as a day to seek alternate work it must be counted as a day of notice. Accordingly, the claim must be denied.

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FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;


That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD: Claim denied.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin E. Scheinman, Neutral Member

December 6, 1989