

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 80

Case No. 80

Referee Fred Blackwell

Carrier Member: J. H. Burton

Labor Member: S. V. Powers

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it abolished the Class 1 position held by Mr. P. Spoljaric effective January 8, 1988 without promptly posting a bulletin identifying the position to be abolished (System Docket CR-3744).
2. As a consequence of the aforesaid violation, Mr. P. Spoljaric shall be allowed eight (8) hours' pay at the Class 1 rate.

FINDINGS:

Upon the whole record and all the evidence, and after hearing on July 31, 1991, in the Carrier's Office, Philadelphia, Pennsylvania, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

DECISION:

Claim sustained.

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OPINION

This case arises from a claim filed on behalf of Machine Operator P. Spoljaric on February 8, 1988, on the basis of allegations that the Carrier violated the Rule 6 requirement that a bulletin shall be "*promptly posted*", along with advance notice, when the Carrier institutes forced reductions or abolishments of positions. It is acknowledged that the Claimant received verbal notice in advance of the abolishment of his position, but the Claimant alleges that no bulletin was posted and that when he reported for work on Monday, January 11, 1988, he was presented with a bulletin stating that his position had been abolished, effective Friday, January 8, 1988.

The Claimant requests eight (8) hours' pay at Class 1 rate, because the bulletin was not posted, resulting in his having no knowledge of a bulletin until he reported for work on January 11, 1988.

The Carrier asserts that the Claimant's Supervisor verbally notified the Claimant of the abolishment of his position as Class 1 Machine Operator, headquartered at Wooster, Ohio, on Tuesday, December 29, 1987, and that the notice of the abolishment was promptly posted on December 30, 1987.

Rule 6, in pertinent part, reads as follows:

"RULE 6 - REDUCING FORCES

(a) Notice of force reduction or abolishment of positions shall be given not less than five (5) working days (four (4) working days for four (4) day gangs) in advance and bulletin shall be promptly posted identifying the positions to be abolished...A copy of the bulletin shall be furnished to the

designated union representative."

The fact assertions made on the Claimant's behalf date from Tuesday, December 29, 1987, at which time, at about 10:35 A.M., the Claimant was verbally advised by Supervisor R. Mallet that his position as a Class 1 Machine Operator would be abolished, effective Friday, January 8, 1988. When the Claimant returned to work following the New Year's holidays, a bulletin confirming the abolishment of his position had not been posted at his headquarters; no bulletin was posted at his headquarters during the week of January 4 through January 8, 1988. On Saturday, January 9, 1988, the Claimant asked his Local Representative to determine whether the Carrier had advised the Organization of the abolishment of his position; the Representative advised that the Organization had not been provided any such notice.

In these circumstances the Claimant reported for duty at the scheduled starting time on Monday, January 11, 1988. At that time Supervisor N. Lubusky presented him with an abolishment notice advising that his position as Class 1 Machine Operator had been abolished, effective January 8, 1988.

The Carrier asserts that the bulletin was posted on December 30, 1987, and that the fact of such posting was attested to by Supervisor R. E. Mallet. The memorandum of Supervisor Mallet is dated October 17, 1988 and is attached to a Carrier letter dated December 13, 1988.

In assessing the foregoing and the record as a whole, the Board concludes that the evidence shows that the bulletin was not posted before the Claimant reported for

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work on January 11, 1988. In this regard it is significant that the Carrier has made no challenge to the Organization's assertion that the Local Representative did not receive a copy of the bulletin as required by Rule 6. Also, the memorandum asserting that the bulletin was posted on December 30 was not submitted for the record until October 17, 1988 and additionally, although the Carrier corresponded with the Organization about this claim in January, February, and September of 1988, the October 17 memorandum was not presented to the Organization until it was attached to the Carrier's letter dated December 13, 1988.

These facts support the Organization's allegation that the bulletin was not posted and a sustaining Award is in order.

In view of the foregoing, and based on the record as a whole, the claim will be sustained.

A handwritten signature in cursive script, reading "Fred Blackwell", is written over a horizontal line.

Fred Blackwell
Chairman/Neutral Member
Special Board of Adjustment No. 1016

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AWARD

The request for a compensatory award by the Claimant, Machine Operator P. Spoljaric, is supported by the record and the claim is hereby sustained.

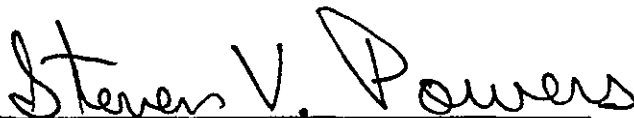
The Carrier shall compensate the Claimant eight (8) hours' pay at the Class 1 rate.

The Carrier shall comply with this Award on or before March 11, 1994.

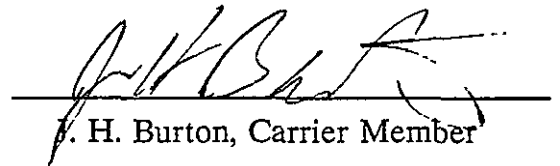
BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016



Fred Blackwell, Neutral Member



S. V. Powers, Labor Member



J. H. Burton, Carrier Member

Executed on 3/10, 1994.

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