

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29865
Docket No. MW-29930
93-3-91-3-311

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former Louisville
(and Nashville Railroad Company)

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

- (1) The Agreement was violated when the Carrier abolished the positions held by Messrs. R. C. Kissick and J. G. Miller effective at the close of work on March 16, 1990 without furnishing five (5) days' advance written notice [System File 2(7)(90)/12(90-545) LNR].
- (2) As a consequence of the aforesaid violation, Messrs. R. C. Kissick and J. G. Miller shall each be allowed twenty (20) hours of pay at their respective straight time rates."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

At approximately 1:30 PM on March 12, 1990, Claimants received notice that their assignments would be abolished effective March 16, 1990. March 16 was not a workday for Claimants. Claim was filed contending that Carrier failed to furnish the five working days advance notice, required by Rule 21(b). Rule 21(b) reads:

"21(b) Five 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, that the five (5) days' notice will be a written notice to each individual involved in a particular force reduction."

The language of the Rule is clear. Employees affected by a force reduction are entitled to be given a written notice five working days before the reduction will be made. If the notice is given after the working day starts, but the employees affected were told verbally before the working day started, that day still cannot be counted because the Rule makes it clear that the notice must be a written notice. No exception is provided. None can be implied.

Carrier also argued that because Claimants were working a four day workweek instead of a five day workweek, four working days' notice is all that would be required in their case. The Rule does not provide for a four working day notice in cases where employees only work four days per week. If the parties had intended that only four days' notice be given in such circumstances the Rule could easily have so stated. It does not. This Board is without authority to make such amendment in its language. We can only direct that the Rule be applied as drafted. Five working days' notice means five full working days' notice. Notice in writing means notice in writing and oral advice does not start the clock ticking.

The Claim has merit.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.