

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30020  
Docket No. MW-30121  
94-3-91-3-556

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister 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 flagging position at the Tensas River Bridge on May 9, 1990 without issuing a five (5) day advance written notice [System File 14(8)(90)/12(90-764) LNR].
- (2) As a consequence of the violation referred to in Part (1) above, Claimant I. W. Owens shall be compensated forty (40) hours at his assistant foreman/flagman's rate of pay."

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.

On May 1, 1990, the Claimant was assigned to an Assistant Foreman/Flagman position, protecting the work of an outside contractor at the Tensas River Bridge project. On that date, the contractor advised the Carrier that it was near completion, but could not determine an exact date. Consequently, an Assistant B&B Supervisor advised the Claimant the position would be abolished as of the end of his shift on May 8, 1990. It was later decided to retain one of the flagging positions. The Claimant, being senior to the other flagging employee and expressing a desire to continue

on the position as long as possible, agreed to waive the required five day written notice of job abolishment and accept, instead, oral notification. On May 9, 1990, the Claimant was informed by telephone that the job would end at the conclusion of his shift that day.

The Organization now seeks five days' pay, contending the Claimant was not afforded proper notice of the abolishment of his position pursuant to Rule 21 - Force Reduction, which reads, in part, as follows:

"(b) 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 of less than twenty-five (25) working days."

It is evident the Claimant did not receive written notice of the abolishment of his position as required by this Rule. Although we find a violation of the Rule, there are circumstances present which cause us to deny the relief sought on behalf of the Claimant. The evidence establishes the Claimant entered into an agreement that was contradictory to the Rule. Both the Carrier and the Claimant received the benefit of this agreement. We cannot, however, recognize the validity of such agreements when they are not made by the duly authorized representatives of the employees and the Carrier. On the other hand, we cannot allow an employee to take the benefit of such an improper agreement and then seek to enforce the rights he had waived therein.

#### A W A R D

Part 1 of the Claim is sustained.

Part 2 of the claim is denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

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

Dated at Chicago, Illinois, this 21st day of January 1994.