

Referee Robert M. O'Brien

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Lehigh and New England Railway Company

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that:

Yardmaster John R. Williams be paid for all time lost including rest days and vacation allowances account being deprived yardmaster work at Arlington Yard on February 12, 1973 and each succeeding day until yardmaster position is re-established. The yardmaster position abolished was a violation of National Mediation Agreement effective February 2, 1973.

OPINION OF BOARD: On February 5, 1973 Carrier posted a Bulletin abolishing the first trick yardmaster position at Arlington Yard effective February 9, 1973. Said abolishment, the Organization contends, violated National Mediation Agreement A-9288 which was signed on February 2, 1973. That Agreement provides for a period of not less than ten calendar days notice prior to the effective date of abolishment of a yardmaster position.

Carrier concedes that the February 2, 1973 Agreement was not complied with when only five days notice of abolishment was given claimant. However, Carrier insists that it was unaware of that Agreement and gave the five days notice in compliance with the Agreement it considered in effect on February 5, 1973. Carrier says that it was unaware of the February 2, 1973 Agreement until February 20, 1973 when it received a copy thereof which had been sent out by the National Railway Labor Conference on February 16, 1973.

It is not disputed that Carrier was a party to the February 2, 1973 Agreement. We feel the responsibility for failure to receive timely notice of the signing of said Agreement must rest with it and not with the Organization. Nor can it be denied that claimant's position was improperly abolished since the February 2, 1973 Agreement changed the requirement for notice of abolishment from five days to ten days. However, we subscribe to the line of authority that holds that the proper measure of damages in a claim such as that before us is limited to the period of time which Carrier failed to properly give under the Agreement, which in the instant claim was five days. We are without authority to order Carrier to re-establish claimant's former position, however.

FINDINGS:

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

The Carrier and the 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.

The parties to said dispute were given due notice of hearing thereon.

The parties to said dispute were granted the privilege of appearing before the Division, to present oral argument.

A W A R D

Claim sustained to the extent indicated above in the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of the Fourth Division

ATTEST: Executive Secretary
National Railroad Adjustment
Board

By: 
Assistant Executive Secretary

Dated at Chicago, Illinois, this 11th. day of April 1974