

Referee Eckehard Muessig

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Seaboard System Railroad
 (Former Louisville and Nashville Railroad)

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

Yardmaster H. W. Renfroe claiming ten day's pay, one day's pay for each of the ten days advance notice required by the Agreement (Rule 14 Mediation Case No. A-9288) in the abolishment of a yardmaster position. Claimant was the occupant of the third shift yardmaster assignment at the time of the abolishment, close of assignment, September 8, 1983.

OPINION OF CLAIM: This dispute arose after the Carrier, on September 8, 1983, abolished the third shift Yardmaster's position at its Lexington, Kentucky Yard.

The threshold issue before the Board turns on a procedural contention advanced by the Organization with respect to Rule 14(a) of the parties' agreement. The pertinent language of that rule reads that:

"In the event a Carrier decides to abolish a Yardmaster position *** such Carrier shall notify the general chairman thereof by telephone (confirmed in writing) or telegram not less than ten calendar days prior to the effective date of abolishment."

The Organization essentially contends that the Carrier did not call its General Chairman, nor did it receive telegram notification as required by the Rule.

For its part, the Carrier asserts that it attempted to call the General Chairman without success on August 26, 1983. It then transmitted a Company wire on that date to the Yardmaster at Lexington, Kentucky and mailed a copy to the General Chairman.

However, the General Chairman contends, with respect to the phone call attempt, that he or his family were at home continuously from August 26 through September 4, 1983, and that he worked his regular assignments beginning August 26 through September 4, 1983. Accordingly, the Organization questions the efforts made by the Carrier to contact him. The Board notes that the Carrier essentially did not refute these assertions by the General Chairman with respect to the phone call issue. Concerning the Carrier's wire, the General Chairman denied receiving a copy of the Carrier's wire of August 26, 1983 until he received the Carrier's denial letter of September 28, 1983, which had a copy attached.

The Board finds, on the evidence of record, substantial support for the procedural arguments. The Carrier has access to records which would have shown that the General Chairman was in a duty status on August 26, 1983, and the days following, so that it is beyond reasonable doubt that he could have been contacted by the Carrier. Turning to the Organization's contention that it did not receive a copy of the Carrier's wire until September 28, 1983, absent a showing in the record to the contrary, it must stand.

While this Board does not wish to construe a contractual provision of the parties' agreement in a manner that would lead to unrealistic results or frustrate its purposes, the controlling language, agreed to by the parties, is clear. It requires that a "telegram" be sent. The agreement does not provide for other means of communication such as Company wire or other forms of electronic communication. A telegram is timed and dated by an independent, uninvolved party and normally carries the required validity that is desirable to protect the interests of both parties.

Under the facts of this dispute, the burden falls upon the Carrier to show that ten days before September 8, 1983, it notified the General Chairman "by telephone (confirmed in writing) or telegram". It failed on both counts.

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

The Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involed herein.

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

The parties to said dispute waived right of appearance a hearing thereon.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Divisin

ATTEST:


Nancy J. Devel - Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1985.