Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award Number 4361
Docket Number 4233

Referee Lamont E. Stallworth

PARTIES TO DISPUTE: Railroad Yardmasters of America
Missouri Pacific Railroad Company

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

Yardmaster B. E. Helvey be paid one day at Yardmasters rate for February 4, 1983 and every day thereafter until yardmaster agreement (Rule 8-Force Reduction) has been complied with.

OPINION OF BOARD: This dispute arises from the abolishment of a Yardmaster position occupied by Claimant Helvey effective February 4, 1983. A letter of notification dated January 24, 1983 was sent by Carrier to Claimant with a copy to the General Chairman.

Rule 8 - Force Reduction, provides as follows:

"(a) In the event a carrier decides to abolish a yardmaster position covered by the rules of a collective bargaining agreement between the Railroad Yardmasters of America and a carrier party hereto, 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. If requested by the general chairman, the representative of the carrier and the general chairman or his representative shall meet for the purpose of discussing such abolishment.

"Nothing in this Agreement shall effect existing rights of either party in connection with abolishing yardmaster positions."

This rule clearly provides two methods of notification to the General Chairman:

1. "...by telephone (confirmed in writing...";
2. "...or by telegram...".

Carrier notified the General Chairman by sending him a copy of a letter of notification sent to Claimant. On its face, it is clear that Carrier did not use one of the two methods of notification set forth in the Agreement.

The Carrier's contention that this letter was proper notification in and of itself is unacceptable.

The Carrier then contends that there were mitigating circumstances involved, namely, that:

1. The General Chairman was on an "extended vacation in Florida", and could not be reached by telephone, and

2. The Carrier did make an effort to notify the General Chairman by telephone, but was unable to reach him.

The issue of the General Chairman being "away from home" was raised on the Property. The period he was away, the so-called "extended vacation", was for two weeks. The use of the word "extended" is somewhat misleading. The fact is, the General Chairman works for the Carrier as a Yardmaster and covered his regular work assignment on January 24, 25, 26, 27, and 28. Yardmasters, presumably, are readily accessible by telephone.

The second issue raised by the Carrier as a mitigating circumstance was not raised on the Property. The Board is of the opinion that because it was not raised on the Property, it cannot be considered by the Board. There is a long line of decisions of this Board on this point.

Receipt of effective notice is always subject to possible mitigating circumstances (change of address, proof of mailing, and so on). The Rule involved addresses those potential problems by severely restricting the method of notification involved. A "letter" is not included as a primary method of notification in that rule (it is, instead, supportive of the telephone call requirement). Carrier certainly has experience in knowing the difference, as for example, in cases where "Certified Mail" is a notification requirement.

Logic would suggest that if, indeed, Carrier was unable to locate the General Chairman by telephone (at his home, his office, or at his place of work for Carrier) prudence would be followed and a telegram would be sent, thus meeting the requirements of the Rule. Carrier would not be required to go so far as to track him down in Florida. Carrier, however, did not exercise prudence, and, instead, violated the Agreement.

Claim sustained to the extent that Carrier shall pay Claimant Helvey ten (10) days pay at the rate of the position involved to cover the period of notification his representative was entitled to under the terms of the Agreement.

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 Employes 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.

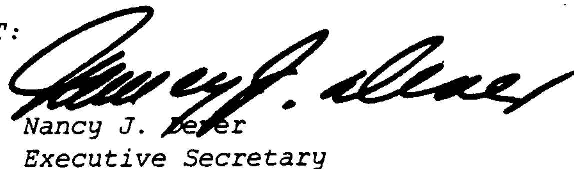
The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:



Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1985.