Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award Number 4477
Referee Lamont E. Stallworth Docket Number 4500

PARTIES TO DISPUTE: United Transportation Union - Yardmasters Department

Consolidated Rail Corporation

STATEMENT OF CLAIM: System Docket No. CR-561

Claim submitted in behalf of the following Yardmasters account Carrier did not give General Chairman required ten (10) days notice on abolishment of positions, violating Rule 5-B-1(a):

R. Zehner for one (1) day's pay at straight time for the first trick Yardmaster position at Saucon Yard on December 28, 29, 30, 31, 1982 and January 1, 1983.

R. Hertzog for one (1) day at punitive rate for second trick Yardmaster position at Saucon Yard on December 29, 1982.

R. McConnell for one (1) day at punitive rate for second trick Yardmaster position at Saucon Yard on December 30 and 31, 1982.

E. Flanley for one (1) day at punitive rate for second trick Yardmaster position at Saucon Yard on January 1, 1983.

F. Dougherty for one (1) day at punitive rate for second trick Yardmaster position at Saucon Yard on January 2, 1983.

OPINION OF BOARD: In the instant case most of the facts are not in dispute. On December 14, 1982 the Carrier sent a Certified Letter from Newark, New Jersey to the Organization's General Chairman in Pittsburgh, Pennsylvania, informing him that beginning on or about December 27, 1982, two Yardmaster positions would be abolished at the Saucon Yard in Bethlehem, Pennsylvania. The Return Receipt shows that the General Chairman did not receive this letter until December 22, 1982. One of the positions was actually abolished three days later on December 25, 1982, and the other one was abolished December 27, 1982, pursuant to a second letter dated December 20, 1982.

On January 1, 1983 the Organization filed two Claims contending that the Carrier's action violated Rule 5-B-1 of the applicable Agreement, which requires a Carrier to give the Organization ten (10) days' notice of any abolishment of positions. The Carrier denied the claims, the Organization appealed the denials and the matter eventually found its way to this Board for review.

The relevant contract language is Rule 5-B-1(a) of the Controlling Agreement, which reads,

"5-B-1. Positions abolished -- advance notice of. (a) Except as provided in paragraphs (b) and (c) of this rule, when a position is abolished, the yardmaster regularly assigned thereto will be given not less than thirty-six (36) hours' advance notice. The General Chairman will be advised not less than ten (10) calendar days prior to the effective date of any abolishment of a regular or relief position which reduces the number of such positions in a thirty (30) mile radius. If requested by the General Chairman, the representative of the Company and the General Chairman, or his representative, shall meet for the purpose of discussing such abolishment."

The Organization does not argue that the Yardmaster(s) in question were given less than thirty-six hours' notice of the abolishment, as the contract requires. The only major dispute between the Parties is whether the Carrier met its contractual obligation to provide ten days' notice to the General Chairman. If that dispute is resolved against the Carrier, a secondary dispute concerns whether the individual Claimants are eligible to receive the monetary awards claimed by the Organization.

The crux of this dispute concerns whether the Carrier's obligation to provide notice is fulfilled if it sends the notice document within the ten (10) day period, even if the General Chairman does not receive it within that period. For the reasons discussed below, the Board concludes that the notice requirement is not met until notice is received, and therefore the Carrier did not meet its obligation in this instance.

In reaching this conclusion, the Board has not relied to a great extent upon precedent. As the Parties have pointed out, the notice provision of this contract, set forth above, has never been interpreted by an appellate forum. Furthermore, the Parties have submitted Awards concerning other notice provisions which support both Parties' contrasting positions. (Fourth Division Award Nos. 4309 and 4310, and Third Division Award No. 3615, submitted by the Organization, Fourth Division Award No. 1717, Second Division Award No. 8833, submitted by the Carrier).

In a general vein, general principles of notice borrowed from other areas of labor arbitration or law are not particularly helpful. Depending upon the case, courts and arbitrators have used either the mailing or the receipt date to determine when notice is achieved.

Nevertheless, general principles of law and common sense dictate that a party cannot have meaningful notice of an event until he actually receives the notice document. Black's Law Dictionary (1979) defines notice as,

"an advice, or written warning, in more or less formal shape, intended to apprise a person of some proceeding in which his interests are involved, or informing him of some fact which it is his right to know and the duty of the notifying party to communicate."

A person cannot be apprised of the proceeding in which his interests are involved until he actually receives notice. Therefore, this Board agrees with the language of Award Nos. 4309 and 4310, which held that "the common and ordinary meaning of the word 'notify' denotes delivery to and receipt by the party to be notified." Because the contract here gives to the Carrier the responsibility to give notice, the Board concludes that that responsibility is not discharged until notice is actually received by the Organization's General Chairman.

This view is supported by the Section in Rule 5-B-1 which permits the General Chairman to request a meeting with the Carrier to discuss any potential abolishment. This right becomes much less effective if the Board were to accept an interpretation of the notice language which would in many cases create a period of only one or two days for the General Chairman to request, schedule and hold this meeting. It makes much more sense that the Parties intended to give the General Chairman a full ten-day period to hold this meeting; even a ten-day period is not a great amount of time in which to schedule such a meeting, and a period of one or two days seems not practicable.

For this reason the Board has not lent much weight to the Carrier's argument that the General Chairman refused the Carrier's offer to regard a December 22nd telephone call between the Parties as such a meeting or to set up a meeting at that time, when the first abolishment was to go into effect on December 25. Furthermore, it appears that this allegation was not argued on the property, and therefore the Board cannot consider it.

The Carrier contends that this is an unreasonable interpretation because it has no control over the mail. The problem with this argument is that it proves too much. Because of the uncertainty of the mail, in fact the Carrier had no way of knowing for certain when or even if the General Chairman would receive the notice within the ten-day period.

But, as the Organization points out, the Carrier did have a choice of methods for delivering notice. It could have used the telephone, or a telegram, both more reliable methods of achieving speedy notice. In fact, these methods of notice were specifically mandated in Mediation Agreement Case No. A-9288, which the Organization contends is the predecessor for this Section of the current contract. Because the language of the prior Agreement is much more specific, the Board does not consider cases under it as controlling precedent. However, the Mediation Agreement does offer guidance concerning the intent of the Parties, and that intent seems to be to use whatever method will guarantee that the Organization's General Chairman will receive notice of an abolishment at least ten days' prior to its effective date.

Having concluded that the Carrier did violate the ten-day notice requirement, the Board is faced with the question of who was injured by this infraction. As noted above, there is no dispute that the individuals whose jobs were to be abolished were given proper three-day notice. The Carrier failed only to give proper notice to the Organization. Therefore, it is not entirely clear who is entitled to damages and what those damages should be, and the Parties have not addressed this issue.

Secondly, although the Organization has provided the Board with the names of several Yardmasters and their Claims in this dispute, they have not provided enough documentation to decide these Claims. It is not entirely clear, for example, why these dates or these Yardmasters were selected. For example, since one of the Yardmaster positions was abolished on December 25, 1982, why is there no Claim for December 26 and 27? In addition, the Carrier has argued that most of these employes were not available for work on the days for which Claims have been demanded. The Organization has not responded to these arguments.

The Claims are granted to the extent that the Board has determined that the Carrier violated the contract. The Claims are denied to the extent that they request specific damages for the individual employes listed. Instead this part of the dispute is remanded for a determination of: 1) who was injured by the infraction; 2) how were they injured; and 3) what should the remedy be for the injury?

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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:

Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois, this 18th day of September 1986.