File: 892281

Public Law Board No. 3994

Parties to Dispute

United Transportation Union - Yardmasters' Department	)	
	)	
vs	)	**Case 8/Award 8**
	)	
Missuri Pacific Railroad	)	

STATEMENT OF CLAIM

Claim on behalf of W. C. Trojacek for ten (10) days' pay alleging the Carrier failed to give proper notice of job abolishment.

Findings

On November 1, 1989 the General Chairman at Fort Worth, Texas filed claim on grounds that the Carrier had violated the operant Agreement when it had abolished the Claimant's position on that date without notifying the Organization as required. The claim was denied on grounds that the Claimant himself had been notified of the abolishment on October 31, 1989 and that the manner in which this abolishment was handled was in accordance with provisions found in Merger Implementing Agreement No. 43. Furthermore, according to the Carrier's officer, it was a fact well-known by both the Yardmasters at Denison, as well as the Organization, that Yardmaster positions were being abolished at Denison. Response by the Organization is that the courtesy extended to the Claimant did not absolve the Carrier of its contractual obligations under the

operant Agreement, that in either case the notification was only one day prior to the abolishment, and that lastly the Merger Agreement does not supercede contractual obligations related to these matters found in the general Agreement. On the upper level of appeal, the Director of Labor Relations in Omaha addresses not the merits of the issue, but the propriety of the relief claimed, and he argues that he cannot find support for the "windfall payment of ten (10) days' pay in addition to any compensation that the employee may have received during the period that the Carrier was allegedly in default". Additional handling of the claim on property develops that the Carrier did advise UTU-Y Chairmen under date of September 28, 1989 that it was going to transfer former MKT Yardmaster work from various locations, including Denison, Texas to Fort Worth, and that the "...changes...will result in the abolishment of...former MKT clerical positions...". Such notice had been served in accordance with Article II, Section 1 of Merger Agreement No. 43. Argument by the Carrier is that the use of the adjective: "clerical" rather than "Yardmaster" in this written notification is a typo which should be construed as only a "minor technical detail...".

In reviewing the full record on this case the Board observes that the 1973 Agreement relied upon here by the Organization states the following, in pertinent part:

> In the event a Carrier decides to abolish a Yardmaster positon covered by the rules of the collective agreement between the Railraod Yardmasters of America and a Carrier party thereto, 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 affect existing rights of either party in connection with abolishing Yardmaster positons.

The language of this mutual agreement between the parties unambiguously lays out the procedures to be followed in these important matters of job abolishment. Nor can the Board find language in Merger Agreement No. 43 to suggest that the intent of the general Agreement's language did not remain binding upon both parties after the implementation of that former Agreement. The argument by the Carrier that notification was given on September 28, 1989 is not acceptable in plain view of the language used by that important piece of correspondence which dealt with transfer of Yardmaster work after the MKT/MP merger. The procedural requirements imposed upon the Carrier by the agreement is that the General Chairmam of the Organization be notified by phone, followed up by written correspondence and/or by telegram with respect to the abolishments and clearly such was not done. There was an Agreement violation here by the Carrier. Such conclusion is consistent with arbitral precedent dealing with this contractual requirement (See Fourth Division 3211, 3802, 4361 inter alia). Relief here is granted on principle that breach of contracts cannot be committed with impunity without "...expecting the violator to accept the consequences" (See Third Division 11701, 12374; PLB 3944, Award 7

inter alia).

On basis of the record as a whole the claim cannot be denied.

Award

The claim is sustained in full. All compensation due the Claimant shall be paid to him within thirty (30) days of the date of this Award.

Edward L. Suntrup, Neutral Member

D. D. Matter, Carrier Member (Dissenting)

J. D. Martin, Employee Member

Date: May 12, 1992

Omaha, Nebraska