

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12365
Docket No. 12265
92-2-91-2-53

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(CSX Transportation, Inc. (former Seaboard Coast Line
(Railroad Company)

STATEMENT OF CLAIM:

1. The CSX-Transportation Company violated the controlling agreement, effective January 1, 1968, as amended, in particular Rules 15(c), 15(d), and 15(1), when at the CSXT West Jacksonville Central Dispatchers Center, Jacksonville, Florida, on March 13, 1989, CSX instructed Mr. P. W. Casale, Communications Maintainer, ID #197590, to protect vacancy of Mr. D. A. Janson, Bulletin #C-550-SBD-A dated February 28, 1989, in lieu of filling vacancy as outlined in controlling agreement.

2. That accordingly, the CSX Transportation Company be ordered to grant Communications Maintainer P. W. Casale, ID#197590, compensation at the overtime rate account carrier assigned Mr. P. W. Casale to protect vacancy of Mr. D. A. Janson as carrier was in violation of said rules March 13, 14, 15, 20, 21, 22, 25, 26, 27, 28, 29, April 2, 3, 4, 5, 8, 9, 10, 11, and 12, 1989.

FINDINGS:

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

The carrier or carriers and the employe or 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.

Parties to said dispute waived right of appearance at hearing thereon.

The basic facts of this case are set forth as follows: Position 7T97 in the Communication Maintainer-Centralized Dispatching Center became vacant and was advertised for bids via Bulletin No. C-550-SBD dated February 28, 1989. No bids were received by March 9, 1989, the closing date of the bid process, and Carrier filled the vacancy by assigning the junior employee (claimant) then holding a "system position", headquartered at Jacksonville, Florida. Claimant was instructed to protect temporarily this position

commencing March 13, 1989, and was compensated in accordance with Rules 13 and 17, the overtime rate for the first day worked on the vacant third-shift position and overtime for the first day worked when he returned to his first-shift assignment. He worked this position until April 12, 1989.

By letter dated April 19, 1989, the Organization filed a Claim wherein it charged Carrier with violating Rules 15(d), (c), and (l) of the Controlling Agreement. It also asserted there were seven junior unassigned Communication Maintainers who at that time, were still unassigned by bulletin.

Carrier argued that employees assigned to system positions were historically used to fill vacancies and disputed the Organization's position that seven junior unassigned Communications Maintainers were available. In its November 2, 1989 denial letter it wrote: "You allege that there are now seven junior unassigned Communications Maintainers and that the 'said unassigned man' should have been assigned to the no-bid vacancy pursuant to Rule 15(d); however, you did not identify the seven junior unassigned Communications Maintainers or the employee you believe should have been assigned to the vacancy instead of Claimant." Later by letter dated October 10, 1990, Carrier delineated the names of employees junior to Claimant for the time periods February 28 through March 9, 1989, and March 13 through April 12, 1989. It also noted and verified their assigned positions.

In considering this case, the Board takes judicial notice of Second Division Award 12335 involving the same Organization and the same Carrier. It is a very recent Award. It involves the same rules, a contested forced assignment, and an assertion that unassigned junior employees were available for the assignment. Since the essential facts of both cases are indistinguishable, we have no option other than to accept Award 12335 as dispositive of the dispute before us. Our conclusion in Award 12335 is referenced as follows:

"Rule 15, which is mainly controlling under the circumstances presented, provides that if no one bids on a position (the situation which arose in this case), the senior unassigned employee will be assigned and paid at the premium rate, as also provided by the applicable rates. We find that Carrier followed the rule. When so holding, we particularly note the Organization on the property never refuted the Carrier's position that 'system' employees have been used in the past to fill temporary vacancies, nor did it provide a specific name of any unassigned employee who should have been assigned. Therefore, the Organization, on the property, has not shown that the rule was violated."

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of July 1992.