

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 12656  
Docket No. 12376  
94-2-91-2-169

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division TCU  
(  
(CSX Transportation, Inc. (former Chesapeake  
(and Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter 'carrier') violated the provisions of Rules 7 and 27 of the Shop Crafts Agreement and Article V of the April 24, 1970 National Agreement between Transportation Communications International Union -- Carmen's Division and the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) and the service rights of Carman W. R. Rose (hereinafter 'claimant') when the carrier failed to allow the claimant to return to his former bid in position when it was restored from abolishment within 30 calendar days.
2. That accordingly, the claimant is entitled to be compensated for twelve (12) days pay of eight (8) hours each day at the Carman's straight time rate from August 1, 1989 through August 18, 1989; nine (8) (sic) days of eight (8) hours each day at the Carman's rate of one half ( $\frac{1}{2}$ ) time for the service which was rendered by the claimant after what would be his regular normal working hours in accordance with the provisions of Rule 7(a) for all time that the claimant worked the third shift from August 1, 1989 through August 18, 1989, with Tuesday and Wednesday rest days; and three (3) days of eight (8) hours each at the Carman's double time rate for working his regular rest days, Thursday and Friday, on the third shift, in accordance with Article V of the April 24, 1970 National Agreement."

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 employe 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.

Just prior to the events at issue, Claimant was working as a Car Inspector on second shift from 3:00 P.M. to 11:00 P.M., Saturday through Wednesday with relief days on Thursday and Friday at the Fulton Transportation Yard in Richmond, Virginia.

On July 25, 1989, Carrier abolished Claimant's position and Claimant exercised his seniority rights to obtain a job on third shift.

On August 1, 1989, Claimant's former position was advertised and on August 6, 1989, Claimant applied for the position. Claimant was the senior bidder and was awarded the position on August 18, 1989.

The Organization maintains that because the restoration of the Car Inspector position occurred less than 30 days from the date the position was abolished, Carrier was obligated to return Claimant to his former position in accordance with the provisions of Rule 27(f), which state:

"When positions are abolished and subsequently restored within thirty (30) calendar days, the last regularly assigned incumbents must return to their former positions...."

Moreover, the Organization argues that Carrier's alleged improper action forced Claimant to work a third shift position, which would ordinarily have been worked as overtime for this particular Claimant. In addition, Claimant was required to work Thursday and Friday, his regular relief days on second shift, and he was denied the right to work Tuesday and Wednesday, his regular workdays on second shift.

Carrier argues that the language of Rule 27(f) does not place responsibility solely upon the Carrier to reassign Claimant to his former position. Carrier submits that the onus of returning to the former position is borne by the employee affected. In this case, Carrier points out, Claimant was aware that the abolished position was being re-established, yet no request was made to be reassigned. Instead, Claimant simply bid for the position as he would have for

any assignment. Under these circumstances, the Organization failed to meet its burden of proving the elements of its claim according to the Carrier.

As for the remedy requested by the Organization, Carrier maintains that Claimant was fully employed and working on third shift during the entire period claimed by the Organization. Because he suffered no wage loss as a result of the alleged violation, any additional payment would constitute a windfall according to the Carrier.

After careful review of the record in its entirety, we find that Carrier violated the provisions of Rule 27(f) by advertising the Car Inspector position for bid, rather than returning Claimant to his former position as required. However, we agree with Carrier's position that the employee bears some responsibility to request to return to his former position, at least under these particular facts, in line with Rule 27(f).

The remaining issue is one of remedy. Claimant was able to exercise his seniority and work on third shift during the time period in question. Since he was fully compensated for the time worked, we agree with Carrier that an award of compensation would provide an unwarranted windfall.

By the same token, we reject the Organization's position that premium pay is a proper remedy for the violation. The contention that Claimant lost overtime pay by working third shift stands unsupported. Without actual evidence that Claimant lost compensation to which he would otherwise have been entitled, we decline to award overtime pay. Moreover, Claimant acquired new rest days on third shift and cannot be considered as having worked the rest days of the job he formerly held on second shift. Accordingly, this Board must conclude that although a violation occurred, there is no compensation owed to Claimant.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Catherine Loughrin  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 19th day of January 1994.