

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13033
Docket No. 12966
96-2-94-2-120

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(International Association of Machinists
(and Aerospace Workers
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

- "1. The Consolidated Rail Corporation violated the Rules of the Controlling Agreement of May 1, 1979, and particularly Rule(s) 2-A-1, 2-A-3, 2-A-4, 3-A-1, and 3-B-1, and Skill Differential provisions of the July 31, 1992 National Agreement particularly Side Letter #16.
2. Accordingly, the claimant is entitled to the remedy as requested. Additional three (3) hours pay at the applicable straight time rate, skill differential payment of an additional fifty (50) cents per hour, and the difference between his regular rate of pay and the lead Machinist rate. This claim starts on January 26, 1993 and continues every day thereafter until settled. Note: Claim is not requesting compensation that Claimant has already received from the Carrier for payment of Skill Differential for the dates of January 26, 27, 28, 29, February 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, and 16, 1993."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 record indicates that the Organization pursued this claim as a violation of Side Letter No. 16 as well as other Rules of the Agreement. The Organization argued that the Claimant was qualified for the Grade "A" Machinist position at the Juniata Vehicle Garage and was passed over by the Carrier in awarding the position to a junior employee.

During the progression of this claim on the property, the Carrier determined that it was in error and that the Claimant was qualified. Additionally, the position in dispute beginning January 26, 1993 was abolished on February 16, 1993. However, the on-property record also indicates that the junior employee was "erroneously" paid the skill differential until March 23, 1993.

The instant claim requests the Board to reach decisions on several issues. The Carrier paid the Claimant the difference between his actual earnings and what he would have earned had he been correctly awarded the position through February 16, 1993. That part of the claim is settled. As the Board understands this claim, the following issues remain. The Organization requests that Claimant be placed on the position for which he bid; that Claimant receive the three hour penalty payment under Rule 2-A-4(b); that he be paid the skill differential; and that the payment should continue throughout the full period when the junior employee was compensated.

After careful consideration the Board reaches the following conclusions. This Board lacks authority to compel the Carrier to re-establish positions. The record of evidence demonstrates that the position disputed was abolished effective February 16, 1993. That portion of the claim is moot and dismissed.

The Organization's request for payment under Rule 2-A-4(a)-6(b) is denied. That Rule states in part that:

"An employee ... who, in other than emergency ... is assigned to perform work not comprehended in his assignment for a period of more than thirty (30) minutes shall be allowed additional straight time pay equal to the time so assigned with a maximum of three (3) hours' pay."

This Board finds no factual basis for payment under this Rule. The Organization's argument is pure assumption. There is no evidence of record to prove that the Carrier would have continued to hold the Claimant on his former position, rather than permitted him to perform the work of the position he should have been awarded. This portion of the claim is denied.

The Board is not entirely clear on what was included in the claim settlement on the property. It is clear on what it determines is proper under these conditions. The Board finds that the Claimant is to be paid the difference between what he actually earned and what he would have earned from January 26, through February 16, 1993, including payment for skill differential. Assuming that the skill differential has already been paid, the claim has been correctly settled on the property and is moot. Claimant is not to receive compensation for any time after the position was abolished on February 16, 1993. Whatever was paid to the junior employee until March 23, 1993 does not represent any loss actually incurred as a result of the Carrier's error and is denied.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 21st day of August 1996.