

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20788  
Docket Number CL-20768

Francis X. Quinn, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station **Employees**  
**PARTIES TO DISPUTE:** (  
(Missouri Pacific Railroad Company

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood  
(CL-7601) that:

1. Carrier violated **Rules** 4 and 7 of the Clerks' Agreement, **when** it failed and refused to assign Mrs. Rose Marie Habermehl to position No. 241, Assistant to **Supervisor** Payables, in lieu of junior employee, Mrs. Pat Soehlke (Carrier's file 205-4825).

2. Carrier shall now be required to compensate Mrs. Rose Marie Habermehl for the difference in rate of pay, \$0.83 per day, beginning **Monday**, April 23, 1973, and continuing for each subsequent work day, Monday through Friday, until violation is corrected. Claim is also to include any subsequent general wage increase.

**OPINION OF BOARD:** The issue is the same as handled by this Board in Award No. 20787. For the reasons stated therein we will deny the claim. Again, the parties should address themselves to the findings of Emergency Board 186 regarding Retraining.

**FINDINGS:** The Third Division of the **Adjustment** Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Pauler*  
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of July 1975.

DISSENT OF LABOR MEMBER  
IN AWARDS 20787 and 20788 (Dockets CL-20729  
and CL-20768 - Referee Quinn)

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It is inconceivable that the majority herein would revert to language of an Emergency Board established under Section 10 of the Railway Labor Act, as amended, to deny a claim of an employee(s) submitted to the Adjustment Board under Section 3 of the Railway Labor Act, as amended.

The claimant(s) herein did set forth a full statement of the facts and all supporting data bearing upon the dispute(s). Such facts apparently have been completely ignored by the majority; since in lieu of rendering a decision based thereon, a portion of an Emergency Board report is quoted in defense of the denial awards. It is to be noted that the Emergency Board report is a recommendation which concerns a particular dispute and that dispute only--a dispute which was never mentioned or raised during the handling by the parties; which to this date has not resulted in an Agreement; and which, moreover, deals with job stabilization and retraining and has no bearing on the dispute(s) here. Further, it is evident that the rights of the claimant(s) under an Agreement which has been in effect for years (specifically, Rules 4 and 7, which entitle the employee(s) to promotion and 30 days in which to qualify), have been denied.

These Awards are in palpable error, and the majority have evaded the responsibility of this Board to apply the clear provisions of the Agreement. In view thereof, I dissent.

  
Gerald Toppen  
Labor Member

August 28, 1975