

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22088
Docket Number MS-21979

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Marie Hoover
(
(The National Railroad Passenger Corporation

STATEMENT OF CLAIM: I am appealing my claim to you for \$1.60 per day for each day beginning March 11, 1976, on which date my rate of pay was reduced, and continuing until such time as the job I am holding, which the Company chose to advertise and award in accordance with the provisions of Rule 6 of the BRAC/Amtrak Agreement, specifically showing the Title of Position as "Commissary Worker Job #13, Lead," is abolished, etc.

OPINION OF BOARD: Claimant in this case was assigned to a position of Lead Commissary Worker at Carrier's Chicago, Illinois Dining Car facility. By letter dated March 10, 1976, she was informed that the "Lead" designation was being removed from her position. The Claim as outlined in the STATEMENT OF CLAIM resulted.

The controlling Rules Agreement provisions in this dispute are Rule 1(C) and Appendix "B". Rule 1(C) provides:

"(C) Rule 5 (Promotion), Rule 6 (Bulletin-Assignment) and Rule 10 (Reducing and Increasing Forces) shall not apply to positions identified as 'Partially Excepted positions' listed in Appendix 'B'."

Appendix "B" is a list of Partially Excepted Positions, which includes, among others:

"Lead Positions in any Category."

From the record in this case, it is apparent that the action as taken by Carrier was permitted by the language of the applicable Rules. Applying the facts in this dispute, the Board finds the Carrier has the license to assign and/or remove employes from "lead" positions without regard to the provisions of Rules 5, 6 and 10. We have no alternative but to apply the Agreement as drafted by the parties. See Award Nos. 21182, 20383, 19815, 18471 and 12558.

Petitioner cannot in this instance rely on previous bulletining of the "lead" position and argue that "past practices can indeed alter or amend the written terms of a collective bargaining agreement". The Board does not agree. Where, as here, the language of the Rule is clear and unambiguous, no amount of contrary past practice can change such language. The Board has consistently so ruled. See Award Nos. 21130, 20643, 18064 and 14115.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.

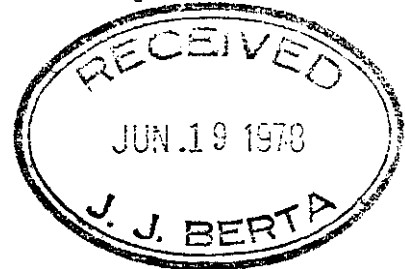
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST :

A. W. Pauls
Executive Secretary



Dated at Chicago, Illinois, this 31st day of May 1978.