

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24297**
Docket Number **CL24607**

Paul C. Carter, Referee

PARTIES TO DISPUTE:

(Brotherhood of **Railway**, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(**Elgin, Joliet and Eastern Railway Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (**GL-9639**)
that:

1. Carrier violated the effective **Clerks' Agreement** when, on July 21, 1981, it removed Clerk Barbara **Dommer** from service without just cause;
2. Carrier shall **now return Ms. Dommer** to service and shall compensate her for all **time** lost c-acing **with July 21, 1982**, and **continuing** until she **is** returned to service. Dates and **amounts** to be determined by a joint check of Carrier records..

OPINION OF BOARD: The dispute herein involves the same **parties, the same Claimant, and** basically the **same** issues as involved in our recent Award No. **24196**. In the prior case the Carrier denied the **Claimant a** janitor position, which position involved the operation of Company vehicles, because she was **under** medical restriction, based on visual deficiency, against driving a Company vehicle. In our present dispute the Claimant was **removed from** the extra board at Gary, Indiana for the **same reason, visual deficiency and Carrier's** restriction against her operating **Company** vehicles.

In Award **24196** the Board found that Carrier had failed to establish reasonable **justification** for the **disqualification** of Claimant on the basis of her visual deficiency. We have carefully **reviewed** Award No. **24196**. We find **it well reasoned** and not in palpable **error**. The Carrier has submitted some of the **correspondence** in the janitor position dispute as part of **its submission** in the present dispute; thus **indicating** that **it considers** the disputes similar.

For the **reasons** outlined in Award No. **24196**, the **claim that the Agreement** was violated in our present dispute **will be sustained** as the Carrier's prohibition against **Claimant** operating **Company** vehicles was disposed of in that Award. **This** referee will not be a party to conflicting awards in disputes between the same **parties, involving the same Claimant, and the same** basic contentious of the parties.

As to the **r-y** for the violation, the Carrier states, and It has not **been** refuted, that because of force reduction, since **November 3, 1981**, Claimant has not possessed sufficient seniority to be returned to service **even** had she not **been** prohibited from operating Company vehicles. We will award that Claimant be paid the difference between what she would have **earned** from July 21, 1981, to November **3, 1981**, had the prohibition against operating Company vehicles not been imposed, and what she may have earned **from the Carrier or other** employment during that period.

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 violated.

A W A R D

Claims sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April 1983.



NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 24297**DOCKET** NO. CL-24607

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, **Express** and Station **Employees**

NAN. 8 OF CARRIER: **Elgin, Joliet and** Eastern Railway company

Upon application of the representatives of the **Employees involved** in the above Award, that this Division **interpret** the same in light of the dispute between the parties as to the meaning **and** application, as provided for in Section 3, **First (m)** of the Railway Labor Act, as approved June 21, 1934, the following interpretation is *made*.

The Organization's notice to file an **ex parte** submission in the dispute covered by Award No. 24297 was dated June **8**, 1982. Award No. 24297 was based upon the record **before** the **Board** at the time the award was made, April 14, 1983. **In** the concluding paragraph of Award No. 24297, the Board held:

"As to the remedy for the violation, the Carrier states; and it has not been refuted, that because of force reduction, since **November 3**, 1981, Claimant has not possessed sufficient seniority to be returned to service even had she not been prohibited from operating Company vehicles. We will award that Claimant be paid the difference between what she would have earned from **July 21**, 1981, to **November 3**, 1981, had the prohibition against operating **Company** vehicles not been imposed, and what she may have earned from the Carrier or other employment during that **period.**"

No contention was raised in the record leading up to the award about junior employees allegedly being recalled to **service** about February 11, 1982. **In** the Organization's request for interpretation, it contends that employees junior to claimant Barbara **Dommer** were recalled to service and **worked** full time from February **11**, 1982, until on or about March 10, 1982 and seeks compensation for Claimant **Dommer** for that period.

It is well settled that the **Board** may not, through the guise of an interpretation, properly consider issues that **were** not before the Board when the original award was issued. Any contention now made that **Ms. Dommer** should have been recalled to service on or about February 11, 1982. must be dismissed.

Referee Paul C. **Carter**, who sat with the Division as a neutral member when Award No. 24297 was adopted, also participated with the Division in making this interpretation.

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By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of October, 1983.

