

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25555
Docket ~~Number~~ CL-25853

James Robert Cox, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
PARTIES TO DISPUTE: (
(The Denver and Rio **Grande** Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Bmtherhood (GL-9292)
that:

1. Carrier violated Article I Section 1, Article II, Section 1, 5, and 7, Article IV, Section 2, 5, 26, of Memorandum of Protective Agreement and Rules 8, 11(u), 11(x) and other related rules of the Agreement when on May 16, 1983, Mr. C. D. **Kilker** did refuse to allow Mr. D. L. Chavez to place on North Yard Extra Board.

2. Carrier will **now** be required to pay Mr. Chavez his protected rate of pay from May 16, 1983 until this claim is resolved.

OPINION OF BOARD: Claimant, Mr. B. L. Chavez was bumped from his Seniority District **in** the ~~General~~ Office Building May 12, 1983, and sought to be placed on the **Extra** Board at North Yard. He was notified that, in order to qualify for this position, he would have to pass a typing test demonstrating that he could type 45 words a minute. While he had been able to type 45 words per minute nine years ago, he took the test and typed 17 words a minute. He was informed that he would be placed on the Extra Board, North Yard, when he became able to pass the test.

The parties had a 1982 Memorandum of **Agreement** which provided that certain "protected **employees**", a category into which Claimant fit, "may also **train...**" for employment. In **such** a case the employee might **be** assigned to an "on the job" training program during which he would receive his protected rate or the training rate, whichever were higher.

Rule 8 of the Agreement states that employees entitled to bulletined positions will be allowed thirty working days in which to qualify and if they failed, would retain all their seniority rights, might bid on any bulletined position but not displace any regularly assigned employee. The Extra Board position, **however**, is not a bulletined job and the Board finds Rule 8 has no applicability here.

Rule 11(u) specifies that "an employee who holds seniority on the district in the General office, Denver, only, is furloughed because of lack of seniority, they will place on the **Denver** extra board in accordance with original seniority date." Subsection (x) of that same Rule reads that: "Training will be given to Extra Board employees and in such case employee will **be** compensated for training at the rate of pay applicable to the position for which he is being trained (**but** not less than guaranteed rate)." (Underlining **our** emphasis)

The Organization argues *in* addition that Rule 11 states that *employees* not holding a regular assignment will be designated as unassigned and that such "*unassigned*" employees will be placed on the Extra Board established for their District to the extent that their services can be utilized."

The Board finds that Claimant *was* entitled to be placed on the Denver Extra Board and given special treatment accorded employees in the unit from which he *was* displaced pursuant to the express and specific unconditional provision of Rule 11(u) which, *applying* commonly accepted rules of construction, predominates over the general language of 6(a). He should have been in that status *from* May 16, 1983, until his recall to the Communication Department June 9, 1983. Consequently, Carrier is required to pay Claimant Chavez under 11(x) during this 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

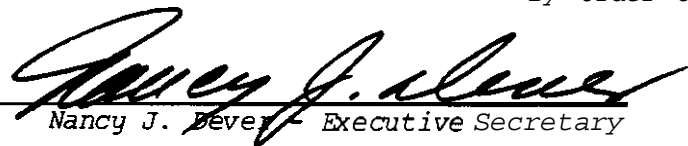
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1985.

