

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26126
Docket Number CL-26045

Robert W. McAllister, Referee

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9956) that:

1. Carrier violated the Clerks' Rules Agreement which became effective March 1, 1973, and in particular Rule 7 as amended effective September 1, 1982, when it required Clerk A. L. Saenz to train on CSC Clerk No. 124 and failed and refused to compensate him accordingly.

2. Carrier shall now be required to compensate Clerk A. L. Saenz five (5) days pay at the rate of CSC Position No. 124."

OPINION OF BOARD: The Claimant, with seniority from September 24, 1968, had his position abolished effective the end of his tour on November 12, 1982. On November 12, the Claimant indicated he wished to exercise his seniority and displace a Junior Clerk. The Carrier verbally approved his request and confirmed that approval in writing on November 12, 1982, as follows:

"This is to confirm verbal advice given you that your request to displace junior employee on CSC Job #124 is approved subject to you becoming qualified on same; however, you are not being instructed to break in on this position as contemplated in Training Agreement of August 19, 1982."

The Organization notes that although the Carrier approved the Claimant's displacement on Customer Service Position No. 124, it failed to comply with Rule 7(b) and required the Claimant to train five (5) days without pay.

The Carrier denies any Agreement violation and argues that break-in pay is applicable only to employees who have been instructed by the Carrier to qualify on certain work and/or positions. The Carrier believes the Organization herein is asking the Board to find an employee can pass up jobs for which he is already qualified and, after shopping for a different job, require the Carrier to pay break-in pay. The Carrier contends the Claimant's actions were voluntary in that he chose not to retain his regular assignment; he failed to exercise seniority to other positions of a higher rate which required no preliminary training; and he, instead, selected a position for which he was not immediately qualified. The controlling language was added to Rule 7 effective September 1, 1982, and reads in pertinent part:

"TRAINING

Except as otherwise provided in paragraph (b) of Rule 35, Carrier will provide pay for training to qualifying employees as set forth below beginning September 1, 1982.

Employees who have performed 90 or more days of service under this Agreement, who are instructed by Carrier to qualify on certain work and/or positions, will be compensated at one-half the rate of such work or positions or the employee's protected rate, whichever is higher, for such qualifying period that is deemed necessary by Carrier. The provisions of this rule do not apply to voluntary exercise of seniority (except as provided in examples attached hereto); to trainees who have not established seniority under this Agreement; to employees returning from leaves of absence under Rules 11, 12 or 17; to employees returning from other service, such as dispatcher or yardmaster; or to employees reinstated to service after disciplinary absence."

The Carrier stresses the above quoted phrase "who are instructed by Carrier." Singularly, the following Attachment to Rule 7 states:

"PAY FOR TRAINING

Pay for training is intended to apply in instances where Carrier causes the move, and not to events resulting from individual employee actions.

Examples: When Carrier instructs employee to train under following circumstances:

Provide Pay for Training
When:

(1) Employees assigned to Extra Board are instructed to train.

Do Not Provide Pay for
Training When:

(1) Employee returns from leaves of absence, such as:

- | | |
|---|--|
| (2) Displacement results from Carrier's abolishment of job. | Sick leave

Personal leave, or return from service as: |
| (3) Carrier changes duties of a new job. | Dispatcher
Yardmaster |
| (4) Carrier installs new equipment, systems, practices, etc. | Official, Excepted or
Restricted Position |
| (5) Employee returns from military service. | (2) Employee voluntarily leaves a position because of change in assigned hours. |
| (6) Carrier changes job from day to night or vice versa or 8 hours or more. | (3) Employee voluntarily changes jobs (except as provided in Item 7 in left column). |
| (7) Employee is permitted to move up to a vacancy of equal or higher rate for which he has sufficient fitness and ability (as contemplated in Rule 4) to qualify for with 5 or less days' training. | (4) Absence because of discipline." |

This Board finds little merit in the argument the Claimant somehow voluntarily chose not to retain his regular assignment. The record discloses the CSC Clerk No. 125 position was abolished to change the rest days. The examples set forth in the clarifying Attachment clearly indicates training pay will be provided when displacement results from Carrier's abolishment of a job. The reliance upon the phrase "who are instructed by Carrier" is, in our view, reliance upon language taken out of context and not read in conjunction with the whole of the September 1, 1982, Amendments to Rule 7. Simply put, the withholding of any instruction to train would enable the Carrier to nullify those specific instances the Attachment clearly and unambiguously provides "... Pay for Training When." Claimant is to be paid 5 days Training Pay at the rate established by amended Rule 7.

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.

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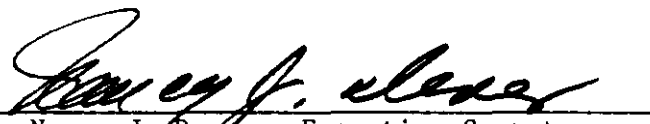
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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1986.

