

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27808
Docket No. MS-28292
89-3-88-3-54

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

(Angelo A. Petrillo
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Conrail System Docket CR-2914, in which it is claimed the Carrier violated the Rules Agreement, effective July 1, 1979, particularly Rules 1, 19, 24 and 40, and other Rules, and Section 706 of the RRR Act of 1973, when it abolished Claimant: A. A. Petrillo's (PEP) Position No. 15348, Chief Clerk, hours 8:15 AM to 5:00 PM, at the Collinwood Diesel Terminal, Cleveland, Ohio, effective February 29, 1984, and assigned duties of that position to employees not covered by the Clerks' Rule Agreement at the Chicago, Illinois Medical Department and also to the Medical Department at Conway, Pennsylvania. This action without Carrier even offering Claimant (sic) an opportunity to follow work or even exercise seniority within the System Medical Department, thus necessitating Claimant (sic) to bump into Seniority District #15, at the highest rate possible, but with a per monthly loss of \$344.41 which Claimant (sic) suffered thru until at least January 20, 1987 when Claimant (sic) became sick and was subsequently awarded a disability annuity effective July 1, 1987."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This dispute represents an ex parte claim filed by Claimant against the Carrier. Specifically, the adjudicative question before the Board is whether the rail carrier violated Rules 1, 19, 24, and 40, and other Rules, and Section 706 of the RRR Act of 1973, when it abolished Claimant's (PEP) position No. 15348, Chief Clerk at the Collinwood Diesel Terminal, Cleveland, Ohio, effective February 29, 1984. In support of his petition, Claimant maintained that when said position was abolished, the assigned duties were transferred to non-agreement covered employees located at the Chicago, Illinois Medical Department and also to non-agreement covered employees located at the Medical Department in Conway (Pittsburgh), Pennsylvania. He asserted that

this action was arbitrarily implemented without his being offered an opportunity to follow the work or an opportunity to exercise seniority within the System Medical Department. As part of his proof demonstration, he delineated most of the duties he normally performed and the approximate time expended per identifiable functional task.

In rebuttal, Carrier argued that the Claim was untimely progressed to the Board and accordingly, should be dismissed under the Doctrine of Laches. It acknowledged that most of the files were indeed transferred to the aforesaid medical centers, but argued vigorously that the Chief Clerk's work was not reassigned to non agreement employees at these locations. It further pointed out that none of the primary duties of Claimant's former position, such as payroll, inventory and correspondence responsibilities were transferred to Chicago and/or Pittsburgh and noted that Rule 19 applies only to the transfer of positions, and not work, as contended by Claimant. It requested a dismissal Award on the grounds that Claimant had not established facts sufficiently specific to constitute a valid claim.

In considering this case, we concur with Carrier's position. In essence, Claimant failed to adduce the quantum and quality of proof needed to substantiate his claim. Outside of an inferential projection that the location of the medical files at Chicago and Pittsburgh were a presumptive indication of probable work transfer, Claimant didn't identify the actual work assertedly transferred or the individuals purportedly performing this work. In the absence of a substantive unmistakable showing that said work was transferred and performed by non-agreement covered employees, we are compelled to conclude that the cited rules and statutes were not violated. Upon the record, we must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1989.