

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28199
Docket No. CL-28261
89-3-88-3-33

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10229) that:

1. Carrier violated the agreement between the parties in particular Rule 7 as amended, effective September 7, 1982 when it required Clerk L. F. Hall to train on Position No. 117 and failed and refused to compensate her accordingly (Carrier's File No. 87038).

2. Carrier shall now be required to compensate Clerk L. F. Hall for thirteen (13) days' pay at one half the rate of Position No. 117 or her protected rate, which ever is higher."

FINDINGS:

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

The carrier or carriers and the employe 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.

On September 24, 1986, by Bulletin No. 7, the Carrier abolished the Claimant's position effective September 29, 1986. By letter of October 1, 1986, the Claimant requested permission to displace a junior clerk pending qualification of Job No. 117. The Carrier granted this request. The Organization asserts the Carrier violated the provisions of the controlling Agreement when it paid the Claimant five (5) days' pay for training despite the fact the training period took eighteen (18) days.

The Carrier denies any Agreement violation. The Carrier argues the Claimant was qualified on seven other positions carrying equal or higher pay. Rather than bid on these positions, the Carrier contends the Claimant chose to displace onto Job No. 117, for which she was not qualified. Accordingly, the Carrier charges her voluntary election cannot be considered to be the direct result of the Carrier's abolishment of her former position. Since it permitted the Claimant to train on Job No. 117, the Carrier insists it properly compensated the Claimant as specified under Section (7) of the Training Agreement dated August 19, 1982. The Carrier asserts this Agreement does not provide for more than five (5) days' training pay since the Claimant's loss of earnings is purportedly "time lost voluntarily."

The August 19, 1982, Training Agreement clearly does not apply to the voluntary exercise of seniority. This Board, however, finds little merit in the Carrier's complaint that this Claimant chose to exercise her seniority on a position for which she was not qualified, thereby nullifying the contested provision of the 1982 Training Agreement. The record establishes the Carrier abolished the Claimant's position effective September 29, 1986. Thus, her displacement is a result of the abolishment of her job. This action does not fall within any exceptions set forth in the 1982 Training Agreement. The Claimant did not voluntarily leave her position because of a change in assigned hours nor did she voluntarily change jobs. These conclusions are further supported by the Board's reasoning set forth in Third Division Award 26126.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1989.