

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(National Railroad Passenger Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10274) that:

1. Carrier violated Rule 6 and other related rules of the Agreement when it did not award Baggage man job listed on Bulletin #185 to Claimant Patricia Davis who was the senior applicant.

2. Carrier shall now be required to compensate Claimant eight (8) hours pay for each day that a junior employee works the Baggage man position which should have been awarded to Claimant, until such time that Claimant is allowed the right to displace onto the position. This is a continuous claim."

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 arose because the Carrier contends that the Claimant's bid for the position of Baggage man advertised by Bulletin No. 185, dated January 21, 1987, was not received in a timely manner, i.e., by 12:00 Midnight on January 27, 1987. There is no argument that, of the employees who submitted bids, the Claimant was the senior applicant.

The Board has carefully analyzed the lengthy record developed on the property and has considered the arguments presented by the parties before the Board. However, the Carrier's many contentions in this case cannot set aside what, under all the circumstances, are certain key facts, particularly when these facts are weighed and viewed in the context of the critical nature that seniority plays in the awarding of bulletined positions.

The record shows that when reasonable doubt existed in the past with respect to the issue of whether a job bid had been received in a timely manner, the Carrier has accepted proof or evidence from the Organization's District Chairman to resolve the timeliness issue. In the situation at hand, we find that the Station Supervisor improperly ignored the evidence presented by the District Chairman. Moreover, that notwithstanding, there is a reasonable basis to conclude that no mail had arrived at the Lakeland Station on January 28, 1987. Given what we noted before, it may reasonably be concluded that the Claimant's bid was received before January 28, 1987.

In view of the foregoing, the Claim is sustained to the extent that the Claimant shall be awarded compensation equal to the difference between what she earned from January 29, 1987, (the effective date of Bulletin No. 185) and the amount earned by any junior employee assigned to the position for so long as the Carrier precluded her from exercising her seniority to the position, or until such time as she exercised her seniority to a higher rated position, whichever comes first. The parties are instructed to jointly review the Carrier's records to make this determination.

In the event that a junior employee has continually been assigned to the disputed position without it having gone up for bid, the Claimant shall be entitled to a displacement right.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Devel - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1990.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 28284

DOCKET NO. CL-28465

NAME OF ORGANIZATION: Transportation Communications International Union

NAME OF CARRIER: National Railroad Passenger Corporation

The Organization has requested an Interpretation of Third Division Award 28284 rendered February 28, 1990. In that dispute, the Organization sought eight (8) hours pay for each day that a junior employee worked a Baggage-man position which should have been awarded to the Claimant.

Had it been our intent to award the Claimant a windfall, as suggested by the Carrier, we would have sustained the Claim as initially presented. As shown by the fact that the Claim was sustained in accordance with the Findings, such obviously was not our purpose. Rather, pursuant to well-established principles, our objective was simply to make the Claimant whole. Accordingly, with that end in mind, we instructed the parties to jointly review the Carrier's records to make that determination.

The record before the Board reveals that the Board's instructions have not been followed, and from our vantage point, that is why the parties are back seeking an Interpretation. The Carrier argues that effective February 4, 1987, the Claimant could have exercised her seniority to another Baggage-man position with the same rate of pay, hours and location. Without acquiescence, it further argues that its records reflect that the Claimant displaced the incumbent of the Baggage-man position initially in dispute effective May 23, 1988, and, accordingly, its liability should cease on that date.

The Organization contends, and the evidence before the Board substantiates its position, that the Baggage-man position to which the Carrier argued that the Claimant could have exercised her seniority effective February 4, 1987, had Tuesday and Wednesday rest days whereas the sought after position had Friday and Saturday rest days. Therefore, factual matters are in dispute. Thus, the Carrier's contention that the two positions had the same hours is not supported by the record.

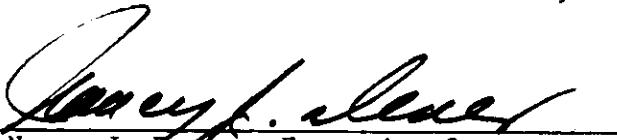
Simply stated, the Claimant should not be compensated for any wage loss which she could have avoided through the exercise of her seniority. However, there is no question, but that the Claimant is obligated to mitigate her damages.

On the other hand, inasmuch as the record clearly reveals that a junior employee held the disputed Baggage position from January 29, 1987, until May 23, 1988, and the Claimant was apparently unable to exercise her seniority to a truly comparable position, she is entitled to the difference between what she earned and the amount earned by the junior employee assigned to the disputed position during the above-mentioned time period.

Referee Eckehard Muessig, who sat with the Division as a Neutral Member when Award 28284 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois this 30th day of July 1991.