

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 28286  
Docket No. CL-27998  
90-3-87-3-528

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

PARTIES TO DISPUTE: (Transportation Communications International Union  
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10191) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Garden City, Kansas, on May 29, 1986, when it removed A. F. Jackson from the unexpired short vacancy to which she was assigned, and

(b) Ms. A. F. Jackson shall now be compensated eight (8) hours' pay at the pro rata rate of Position No. 6000 for May 29, 30, 1986, and June 2, 1986, in addition to any other compensation she may have received for the above."

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.

The basic facts in this case are set forth as follows:

Claimant who was in an off-in-force reduction status was requested to re-familiarize another employee on Position No. 6000. This assistance occurred on May 27 and 28, 1986. The regular incumbent of said position was on scheduled vacation from May 27, 1986, through June 13, 1986, and thus Carrier protected this position with an employee from the Zoned Extra Board. It was the Organization's position that said personnel action violated the Controlling Agreement, particularly Rule 14 among others and also Section 2(a) of Appendix 10 of the Zoned Extra Board Agreement. In essence, the Organization asserted that the employee used from the Zoned Extra Board was unqualified for the position and accordingly, should not have been allowed to protect the position. It also argued that employees on the Zoned Extra Board were precluded from displacing employees in an off-in-force reduction status.

In rebuttal, Carrier contended that Claimant was not assigned to protect the short vacancy, but rather to refamiliarize the called in Zoned Extra Board employee with the RCAO reports. It asserted that said employee was qualified for the position and, as such, was called in pursuant to Section 2(a) of the Zoned Extra Board Agreement, which reads:

"When a short vacancy exists, and if it is to be filled, qualified employees on Extra Board Positions in that zone will be used to fill such vacancy before applying the provisions of Rule 14 provided the employee is available at the straight time rate."

Since the provision of Appendix 10 takes precedence over Rule 14, Carrier maintained that it complied with the governing requirements.

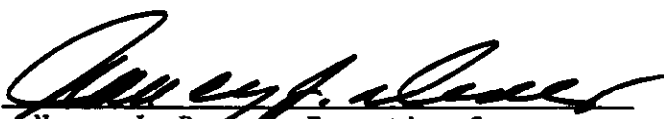
In considering this case, the Board concurs with the Organization's position. To be sure, Section 2(a) of the Zoned Extra Board Agreement takes precedence over Article 14 when short vacancies are to be filled, but the employee called must be qualified for the position. In the case herein, despite Carrier's assertion to the contrary, the employee used from the Zoned Extra Board was not qualified to assume immediately the full duties of Position No. 6000, but required two (2) days refamiliarization with the RCAO reports. Since the language of Section 2(a) is explicit and requires the Zoned Extra Board to be qualified at the inception of the short vacancy assignment, two (2) days re-familiarization is a significant portion of the short vacancy period. Consequently, under these circumstances, we are not convinced that said employee was qualified as that word is understood under Section 2(a). We will not grant compensation requested for May 29, 30 and June 2, 1986, since Claimant was provided protective compensation for these days as per the February 7, 1965 Mediation Agreement, but we will direct that she be paid the difference, if any, between the rate she would have earned had she worked the position and the amount she received as protective pay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

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