

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
(
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10368) that:

1. Carrier violated the provisions of the current Clerks' Agreement at San Bernardino, California commencing on June 1, 1988 through June 30, 1988, when it failed and/or refused to compensate Ms. Martinez the proper rate of pay for Position No. 6013, and

2. Claimant shall now be compensated one (1) hour's pay at the pro rata rate of Position No. 6013 from June 1, 1988 through June 30, 1988, in addition to any other compensation she may have received for these days."

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 employes involved in this dispute are respectively carrier and employes 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 essential facts of this case are not in dispute. These show that the Claimant was recalled on May 24, 1988, and assigned to Report Clerk Position No. 6013 located at the Carrier's San Bernardino, California, facility. However, the Claimant told a Carrier official that she could not work the position because it was an afternoon assignment beginning at 3:00 P.M., and ending at 11:00 P.M. The Carrier agreed to the Claimant's request and she continued to work a short vacancy relief assignment until that position was abolished on June 30, 1988. Controlling in this matter is Rule 11-D of the Agreement which reads:

"11-D. An employee awarded a bulletined position will be released for such assignment as soon as a qualified relief is available and in any event within seven calendar days after date of assignment bulletin. An employee

not so released within seven calendar days after the date of assignment bulletin will thereafter receive the rate of the position occupied or the position to which assigned, whichever is higher, and in addition will be paid one hour's pay, at the higher pro rata rate, each work day of the position occupied until released."

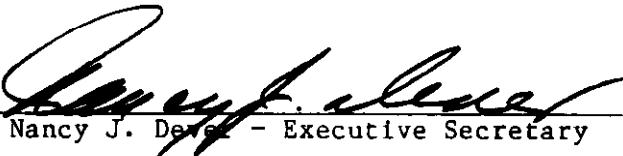
Applying Rule 11-D to the facts here leads to a conclusion that the Agreement has been violated. It is a well-established principle that private Agreements and understandings cannot be made with individual employees on matters covered by a Collective Bargaining Agreement, as was done in the case at hand. Accordingly, while we are not unmindful of the Carrier's forceful arguments before the Board, we are bound to apply the terms of the parties' Agreement, given the facts as presented on the property and in light of the particular circumstances leading to this Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1990.