Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 28831
THIRD DIVISION Docket No. CL-28752
91-3-89-3-150

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
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(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10352) that:

CLAIM NO. 1:

(a) Carrier violated the rules of the current Clerks' Agreement at Los Angeles, California, on February 12, 1988, when A. E. Nerkowski was not properly compensated for work performed; and

(b) A. E. Nerkowski shall now be compensated for four (4) hours at the straight time rate in addition to any compensation Claimant may have received for these days at rate of Position No. 6134.

CLAIM NO. 2:

(a) Carrier violated the rules of the current Clerks' Agreement at Winslow, Arizona, on April 20, 1988, when it diverted Claimant J. R. Adelfson from Position 6097, TOFC Clerk, Winslow, Arizona, to perform relief work and then failed and/or refused to properly compensate him; and

(b) Claimant J. R. Adelfson shall now be compensated (7) hours' pay at the pro rate rate of $106.97 plus one (1) hour's pay at the pro rate rate of $106.97 at time and one-half, in addition to any other compensation already received, as a result of such violation of Agreement rules."

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.

In this dispute there are two (2) separate Claims though the basic adjudicative issue is the same. In both cases Claimants were in off-in-force reduction status when they were called to protect short vacancies, and in both cases they were notified to protect other positions before the start of the short vacancies. With respect to Claim 1, the Claimant was scheduled to protect Position No. 6134 (HD Record File Clerk) on February 12, 1988, but was notified at 11:10 P.M. on February 11, 1988, to protect Position No. 6236 (Towerman) on February 12, 1988, at Redondo Tower. The regular incumbent of the position had laid off due to sickness. Position No. 6236 was subject to the Hours of Service Law. Regarding Claim 2, the Claimant was scheduled to protect a short vacancy on TOFC Clerk Position No. 6097, effective April 20, 1988, but was notified on April 19, 1988, that he was to protect Car Clerk Position No. 6061 at Flagstaff, Arizona on April 20. Claims were filed by the Organization on March 12, 1988 (Claim 1) and May 31, 1988 (Claim 2) contesting these actions.

It is the Organization's position that when Carrier scheduled Claimants to fill Position Nos. 6134 and 6097, these positions became regular assignments and both Claimants were de facto incumbents. Thus, when Carrier diverted them to other positions, said diversions amounted to relief work and were violative of Rules 1, 4, 5, 6, 8, 11, 26, 27, 31, 32, 47 and 59 of the Controlling Agreement and the December 7, 1977 Letter of Understanding concerning Third Division Award 21578.

In response, Carrier argues that Claimants were not regularly assigned employees as that term is understood under Rule 32-N Emergency Relief Work of the Controlling Agreement and the intended application of the December 7, 1977 Letter of Understanding. Carrier maintains that since neither employee occupied a regular assignment at the time of recall from off-in-force reduction status and since they were initially scheduled to occupy these positions as short vacancies, their contested assignments could not be considered diversionary relief work. Rule 32-a applied and the December 7, 1977 Letter of Understanding only applied to regularly assigned employees.

In considering this case, and specifically within the context of the parties on-situs appeals correspondence, the Board is confronted with a positional standoff wherein the Organization contends that an off-in-force reduction employee stands in the shoes of the regular employee, when assigned to the vacated regular assignments, while Carrier argues that said employee is an unassigned employee and not subject to the coverage of Rule 32-N and the December 7, 1977 Letter of Understanding. The Organization offered no proof or further detailed explication on the property that its interpretative position was observable practice on the property. It submitted a thoughtful Submission to the Board, but said Submission contained new arguments and exhibits that were not presented or discussed on the property. Under Board Circular No. 1, we must deem this material inadmissible. Accordingly, based upon the on-situs written appeals record, we cannot conclude that Carrier violated the Agreement and/or the December 7, 1977 Letter of Understanding.

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 25th day of June 1991.