

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10398) that:

(1) Carrier violated the Working Agreement, particularly Rules 15(c), 18 and 19(b), among others, when in February 1988, it failed and refused to assign Seniority District No. 9 clerical employees W. E. Minor, W. Matthews and P. T. Rossiter to positions in Seniority District No. 11 in accordance with their seniority.

(2) Carrier further violated the Working Agreement, particularly Rule 33 (Time Limits), when the District Manager, with whom initial claims were timely filed, failed to deny or give reason for disallowing such claims.

(3) Carrier shall now be required to compensate W. E. Minor eight (8) hours pay at the Bill & Audit Clerk No. 119 rate (\$110.80/day) commencing February 8, 1988; W. Matthews eight (8) hours pay at the Senior Forwarded Checker No. 280 rate (\$110.80/day) commencing February 15, 1988; and P. T. Rossiter eight (8) hours pay at the Car Tracing Clerk rate (\$2,404.18/month) commencing February 29, 1988, and compensate them for each subsequent date until such time as they are assigned the positions in question and awarded a proper seniority date in Seniority District No. 11."

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.

First it is noted that the Claim with respect to Claimant Rossiter has been withdrawn and will not be considered in conjunction with this determination.

Both parties raised procedural arguments (time limits) with respect to this dispute. The Organization alleges that Carrier did not respond to the original claims within the contractually required period and Carrier maintains that the Claims were not presented to the appropriate Carrier official previously designated as the official to receive such claims. A careful examination of the record convinces the Board that there was considerable confusion surrounding this dispute primarily because two of the Claimants were furloughed and the vacancies occurred in a different seniority district than the one they had been assigned to prior to their furloughs. It does not appear that there was any intent to abuse the process of claim handling by either party nor was there any serious impact on either employee or Carrier rights by the alleged improprieties. For those reasons it is believed that the best interests of the parties will be served by dealing with this dispute on its merits and dismissing the offsetting procedural arguments.

The two remaining Claimants herein were furloughed from District 9; the vacancies involved herein were in District 11. By letter dated January 12, 1988 furloughed employees in District 9 were notified of anticipated clerical vacancies in District 11, in the headquarters building (in close proximity to District 9). That notice stated that the jobs would be filled in order of the receipt of the replies. The record indicates that two positions were filled by furloughed clerks from District 9 with less seniority than Claimants Matthews and Minor based on the dates of their replies to the January 12th letter.

The pertinent portions of Rule 15(c) and Rule 18 provide as follows:

"RULE 15

(c) When forces are increased or vacancies occur, furloughed employees shall be returned and required to return to service in the order of their seniority rights, except as otherwise provided in this rule. Such employees, when available, shall be given preference on a seniority basis to all extra work, short vacancies, and/or vacancies occasioned by the filling of positions pending assignment by bulletin, which are not filled by rearrangement of regular forces." (Emphasis added)

"RULE 18

FILING APPLICATIONS

Employees filing applications for positions bulletined on other districts will, if they possess sufficient fitness and ability, be given preference on a seniority basis over non-employees and/or employees not covered by this agreement." (Emphasis added)

The Organization argues that Carrier is not entitled to "select" as it wills, based on receipt of applications to fill vacancies in "other" seniority districts. The Organization relies on the language of Rule 15(c) supra and notes that Carrier properly applies the language of that Rule to short term vacancies, while choosing to ignore it with regard to longer term vacancies, as herein. The Organization also relies on Third Division Award 22869 which deals with an identical problem.

Carrier maintains that there is no system-wide seniority on this Carrier and it acted properly in the assignments in question. Carrier relies on Third Division Award 15045 and insists that the Rules involved in fact dealt only with the preference of employees over non-employees or other employees not covered by the Agreement. Carrier argues that it properly filled all the vacancies in District 11 with employees from Districts 7 and 9. Furthermore Carrier notes that Claimants Matthews and Minor waited seven and nine days respectively in filing applications for the vacancies in question (while the successful employees filed promptly). Further, Carrier states that neither of the two Claimants suffered any losses as a result of the assignments.

The Carrier's reliance on Award 15045 in this instance is not persuasive. The treatment of Claimants herein as if they were new hires and therefore "first received, first assigned" is contrary to the language of Rule 15(c). It would be incorrect to ignore the seniority language contained in that Rule, if Carrier's position was sustained. The Board believes that the reasoning expressed in Award 22869 is controlling and should be followed. The seniority provisions of Rule 15(c) must be given some meaningful weight; to ignore that language would be tantamount to modifying the Agreement.

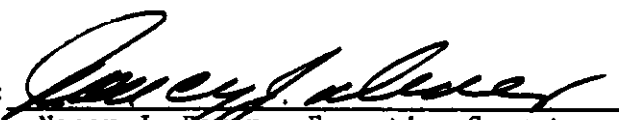
The record does not indicate any monetary losses for Claimants due to Carrier's actions in this matter. Thus, the remedy will only relate to the filling of similar vacancies in the future. Further, due to the timing of Claimants' filing, no seniority adjustment is appropriate.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1991.