Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 29095
THIRD DIVISION Docket No. CL-29370
92-3-90-3-294

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
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(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10464) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Barstow, California, on March 17, 1989, when it failed and/or refused to properly award and/or assign a bulletined position to the employee(s) with a notice on file under the provisions of Rule 13, and

(b) J. L. Alvarez shall now be placed on Relief Clerk Position No. 9000 and shall be compensated for eight (8) hours' pay at the pro rata rate of Relief Clerk Position No. 9000 for each work day of that position commencing March 18, 1989, and continuing until Claimant is placed on Position No. 9000, in addition to any other compensation Claimant may have received."

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.

On March 9, 17, 27 and April 4, 1989, the Carrier advertised Relief Clerk Position No. 9000. No one bid for the position. After being bulletined again on April 13, 1989, an assignment was made to Position No. 9000.

The dispute before the Board is the question of whether the Claimant should have been offered Position No. 9000. The Organization asserts that, pursuant to Rule 11-B and Rule 13, the Carrier was required to assign the vacancy to the Claimant. The Carrier, when denying the Claim, mainly contends

that the Claimant was not a proper Claimant because there were five other employees who were more senior to the Claimant and had Rule 13 requests on file. Therefore, the Carrier argues, even if a violation existed, the Claimant would not have been entitled to be assigned to Position No. 9000 unless the other employees refused the position.

Rule 11-B requires that when making assignments, requests for transfer submitted by employees (in those circumstances when the provisions of Rule 13-A(3) apply) will be considered as bids. We find such a situation in this Claim and, therefore, a violation of the Agreement has occurred.

We have considered the Carrier's argument that the Claimant was not the proper Claimant, but do not find it persuasive.

With respect to the question of damages, we conclude that the requested remedy of eight hours pay, in addition to any other compensation is inappropriate. We note that it appears that the Carrier's action was not motivated by any intent to subvert the Agreement because the events which led to its actions arose because of a medical leave of absence of the employee who was expected to be assigned to the position at issue in this Claim.

Accordingly, we conclude that the parties should forthwith jointly review appropriate Carrier records and award the Claimant the difference in earnings for the period that she would have been entitled to hold the position.

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 23rd day of January 1992.