

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen 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-10497) that:

(a) The Carrier violated the provisions of the current Clerk's Agreement at Belen, New Mexico on June 19, 1989, when it failed and/or refused to call Claimant J. J. Barnes to fill the short vacancy of Messenger Support Service Position No. 6062, and

(b) Claimant J. J. Barnes shall now be compensated thirty (30) minutes pay at rate of Position No. 6062, \$102.42 per day, account held off one (1) hour from position of his choice (Position 6062), plus eight (8) hours' pay at pro rata rate of Position No. 6062, \$102.42 per day, beginning June 19, 1989, Monday through Friday, five (5) days per week, continuing as long as the short vacancy exists (July 7, 1989), (15 days, 30 minutes pay at rate of Position 6062, \$102.42 per day) and in addition, eight (8) hours at pro rata rate for holiday, July 4, 1989, in addition to any other compensation Claimant may have received for these days, as a result of this violation.

(c) Claimant Barnes shall also be paid, in addition to compensation claimed in (b) above, interest on moneys claimed of twelve (12) per cent per annum until claim is paid."

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.

Claimant has a seniority date of October 17, 1976, on the New Mexico Division Station Department Seniority Roster and at the time of the instant dispute was the occupant of Position No. 6440, Zone Extra Board. On June 18,

1989, Claimant was instructed at 7:00 A.M., to observe Monday, June 19, as a rest day, in accordance with Item 7 (a) of the Zoned Extra Board Agreement, and to protect a short vacancy on Position No. 6071 commencing Tuesday, June 20, 1989, at 3:00 P.M. Had he not been required to observe June 19, 1989, as a rest day, Claimant would have been in line to commence a 15-day known vacancy on Crew Caller Position No. 6062. The rate of Position No. 6071, Transportation Service Specialist, was \$109.81 per day and the rate of Position No. 6062 was \$102.42 per day.

On July 20, 1989, the Organization filed a Claim on behalf of the Claimant, alleging he was improperly prevented from protecting short vacancy of Messenger Support Service Position No. 6062 commencing June 19, 1989.

A review of the claim reveals that it is predicated on alleged violations of Appendix No. 10, Item 2 (a) and Item 3 (a) of the March 3, 1980 Zoned Extra Board Agreement which are quoted in pertinent part as follows:

"Item 2 (a)

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....

Item 3 (a)

In calling employees on extra board positions to fill short vacancies known at the time of calling, the first-out employee on the board will be assigned to the first short vacancy and, if more than one vacancy with the same starting time, the employee will be allowed to select the short vacancy he desires to work, if qualified. However, if the requirements of service prevent an employee from working the vacancy of his choice, the employee shall receive the rate of the position worked or the rate of the position he chose to work, whichever is higher, and, in addition, if held off one hour, the employee will be allowed thirty minutes pay. For each additional hour held off he will be allowed one hour's pay for each hour held off. The employee will work the short vacancy on a day-to-day basis, and while working

as such will receive the penalty until released from the assignment, at which time he will be marked up on the board on the basis of the position actually worked. It is understood this is not a diversion."

Item 7 (a) of the same Agreement is also pertinent to the instant dispute and is quoted below:

"Employees holding title to an Extra Board Position will be given as much advance notice as possible as to their rest day(s) but the employee will be notified no later than the immediately preceding availability period that he will commence a rest day(s) the following availability period."
(Emphasis added)

There is no dispute concerning the facts herein. However it is incumbent upon the Organization that it substantiate its claim of contract violation by a preponderance of the evidence. The Organization's contention that the Carrier's conduct was willful, arbitrary, and a deliberate effort to prevent the Claimant from assignment to Position No. 6062 is not convincing. We note the Claimant did not suffer a monetary loss and actually made more in wages filling Position No. 6071 than he would have had he filled the short vacancy of Position No. 6062. We also recognize, however, that other factors besides maximizing earnings might motivate an employee bid preference.


From the Claimant's perspective, the timing and sequence of events was unfortunate, but every perceived wrong is not an Agreement violation. This Board finds no animus, conspiracy, or bad faith on the part of the Carrier and no violation of Claimant's Agreement rights. Therefore, this Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.