

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Chicago, West Pullman and Southern Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10360) that:

1. Carrier violated the effective agreement when on July 27, 29, August 1, 3, 5, 8, 10, 12, 15, 17, 19, 22, 24, 26, 29, September 2, 7 and 9, 1988, it failed to properly compensate Clerk Larry Miller for work performed.
2. Carrier shall now compensate Mr. Miller for the difference between what he was paid and the rate of the position of Chief Clerk for each of the above dates, including overtime payments for August 5 (2 hours), September 2 (4 hours) and September 9 (one-half hour).
3. Carrier shall additionally compensate Mr. Miller for September 5, 1988, an additional ten hours' pay at the time and one-half rate for September 5, 1988, a holiday."

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 Organization filed a claim on the Claimant's behalf, contending that, on the dates set forth in the claim, the Carrier violated the effective Agreement by failing to pay the Claimant at the proper rate of pay for the Chief Clerk position. The Organization also contends that the Carrier failed to pay the Claimant at the time and one-half rate for either hours worked in excess of eight in any day or for work performed on Labor Day. The Carrier denied the claim, asserting that the Claimant voluntarily accepted a part-time exempt position and performed duties that are not within the scope of the Agreement between the parties.

This Board has reviewed the record in this case and we find that the Claimant who had been off on furlough was brought back by the Carrier to perform clerical, janitorial, and watchman duties. That type of work is governed by the various Rules of the Agreement between the parties. Although the Carrier contends that the Claimant was brought back as "special duty personnel," the record is clear that he was brought back as a clerk and pursuant to the Agreement between the parties, he should have been paid and treated as a Chief Clerk.

The parties entered into a Memorandum of Agreement on June 29, 1983 that stated in part:

"It is agreed that the Carrier may use the Chief Clerk to perform any and all work at any location which is work coming under the scope of our Agreement when it is only necessary to employ one clerical position."

Consequently, if the Carrier brought back a clerk, and it did in this case, then it had to bring him back as a Chief Clerk and pay him as a Chief Clerk. Although the Carrier indicates that it may have entered into a special agreement with the Claimant, it is well settled that individual employees may not enter into a special agreement with a Carrier when it calls for fewer benefits than are set forth in the Collective Bargaining Agreement.

This Board rejects the Carrier argument that the June 29, 1983 Agreement expired in 1986. Agreements under the Railway Labor Act do not expire, but rather continue until they are changed by the parties.

Finally, in Public Law Board 4981 between the same two parties, the Board determined that the Claimant in that case was entitled to be compensated at the Chief Clerk's rate of pay.

Given the facts in this case, this Board must find that the Claimant should receive the difference between what he was paid and the rate for the position of Chief Clerk on each of the applicable dates.

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 17th day of September 1992.