

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29400  
Docket No. CL-29835  
92-3-91-3-213

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(CSX Transportation, Inc.  
(former Louisville & Nashville Railroad)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10566) that:

1. On January 19, 1990, the Carrier violated the Clerical Agreement when it refused to reverse its position and allow Clerk J. R. Elmore the right to exercise his seniority to a position in the Division Manager's Office, in particular that formerly held by Clerk J. M. McArthur now held by Clerk T. L. Garner.

2. As a result of the above, the Carrier shall be required to immediately allow Mr. Elmore the right to exercise his seniority to the position in question without being required to take the typing test; further the Carrier will be required to compensate Mr. Elmore any difference in pay between the position he attempted to roll onto and the positions he works until such time as he is allowed to exercise his seniority on the position in question."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 Claimant was denied the asserted right to displace a junior employee on Position 313 when he was displaced from his position. Actually, the junior employee was the incumbent of Position 311. The basis for the refusal was failure to take a typing test. The Claimant sought an Unjust Treatment Hearing, and after the Hearing, the refusal to permit the displacement was affirmed.

The Organization argues that a September 25, 1987 Agreement excuses employees who previously worked in the Division Manager's office from taking a typing test when exercising seniority, and a subsequent consolidation did not alter that Agreement.

The Carrier's February 19, 1990 denial on the property seems to clearly establish that the Carrier's refusal to permit the displacement was based upon a conclusion that "...the position in question is not considered part of the Division Manager's Office. This entire matter could have been cleared up by you taking a typing test...."

The Carrier argues that the position in question is physically located in the Office of the Division Expenditures and is responsible to the Finance Department; it is not a job in the Division Manager's Office.

We are of the view that this Claim should be sustained on its merits. There was a clear understanding in late September 1987, that those who formerly worked in the Division Manager's Office would not be required to take a typing test when exercising seniority to a position therein. Four days later, as a result of a consolidation, it was agreed that certain positions from the Nashville Division Manager's Office were abolished, and certain designated positions were established in the Mobile Division Manager's Office. Included therein were Positions 820-313 and 314. Carrier does not appear to base its denial upon the confusion of Position 311 with 313. Nor does the record indicate when, and by what means, those positions ceased to be included in the referenced office.

Based upon the decision on the merits, it is not necessary to consider the Organization's time limit violation argument.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dyer - Executive Secretary

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