

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29490
Docket No. CL-29608
93-3-90-3-587

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(Transportation Communications Union
(
PARTIES TO DISPUTE: (CSX Transportation, Inc. (former
(Seaboard Coastline Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10526) that:

(1) Carrier is in violation of the current Agreement dated January 1, 1975, as amended, by failing to timely assign senior applicant to positions advertised, as outlined in Rule 11 thereof.

(2) As a result of this violation, Carrier shall be required to compensate Claimant Tim Langham at the time and one-half rate of the position worked, or the rate of the position of Assistant Transportation Service Agent, Lithonia, Georgia, that the Carrier held him off of improperly, which ever is higher, for the dates of May 1, 2, 3, 4, 5, 6, 8, 9 and 10, 1989."

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 April 12, 1989, the Carrier posted Advertisement No. 56 for Position No. 152 at Lithonia, Georgia. The position was that of Assistant Transportation Service Agent. The Claimant was the successful applicant for this position and he was awarded it effective May 11, 1989. Thereafter, a claim was filed on grounds that Advertisement No. 56 expired on April 24, 1989, and that in accordance with Rule 11 of the Agreement, assignment to the position ought to have been made by the Carrier no later than April 29, 1989. Relief was requested for the dates of May 1-6 and 8-10,

1989, at the time and one-half rate. It is the position of the Organization that such rate is proper in accordance with Rule 65 of the Agreement.

The Rules at bar read as follows in pertinent part.

"Rule 11 - Bulletining New Positions or
Vacancies and Bidding Therefor

(a) New positions or vacancies of more than thirty (30) calendar days' duration will be promptly bulletined in agreed-upon places accessible to all employees affected, for a period of ten (10) calendar days on line of road and five (5) calendar days in general offices, simultaneously to the entire seniority district as enumerated in Rule 4. The bulletin will show location, title, not more than four principal and/or preponderant duties sufficient to identify position, rate of pay, assigned hours of service, assigned meal period, assigned rest days and, if temporary, the probable or expected duration. If the bulletin expires on a Saturday, Sunday or holiday, the expiration date shall be extended to the next work day. Bulletin shall be in standard form as shown below, with copy of the bulletin and notice of assignment being given to the Division and Vice General Chairman.

NOTE: It will not be necessary to show the principle and/or preponderant duties on bulletins advertising relief positions, it being understood that the duties to be performed will be those attached to the positions relieved. However, if the relief position is to perform work on certain days that is not relief as contemplated in Rule 19(f), the principal and/or preponderant duties for such days will be shown on bulletins.

(b) Employees desiring such positions will file their bids with the designated officer within that time, stating their applicable seniority date. An assignment will be made within five (5) calendar days

thereafter. The name of the successful applicant will immediately thereafter be posted for a period of five (5) calendar days where the position was bulletined.

(c) The successful bidder will be required to protect the new assignment no later than the first day of the work week following the posting of the assignment bulletin, unless otherwise agreed to by the Division Chairman and appropriate officer of the Carrier.

Rule 65 - Regularly Assigned Employees Performing Extra or Relief Work and the March 27, 1975 Sidebar Agreement read, in pertinent part, as follows:

"Regularly assigned employees will not be required to perform relief work except in cases of emergency and when required to perform relief work, and in consequence thereof suffer a reduction in regular compensation, shall be paid an amount sufficient to reimburse them for such loss. If any such employee would receive time and one-half rate through the application of Rule 20, on any day such work is performed the time and one half rate shall apply on that day or days.

NOTE: This rule or combination of rules contained in this agreement shall not be construed to require payment in excess of time and one-half for any tour of duty, except for the straight-time payment for holiday and vacation made pursuant to those agreements."

"IT IS AGREED THAT: (March 27, 1975)

When used on another position having the same assigned hours, they shall be paid the straight time rate of the position worked or their regular straight time rate if higher."

Given the facts of record the Board concludes that the Carrier was in violation Rule 11 of the Agreement when it did not assign the Claimant to Position No. 152 by April 29, 1989. The parties themselves do not dispute this. The issue which remains is the proper relief to be paid to the Claimant. The position of the Carrier is that appropriate relief is the difference in pay between the rate which the Claimant was receiving on the days in question, and the rate which he would have received had he worked Position No. 152. The position of the Organization is that Rule 65 mandates that the Claimant receive time and one-half for the days in question.

A search of the record fails to produce any other argument on the property by the Organization with respect to Rule 65, except to say that time and one-half is justified because the latter Rule applies. The only arguments presented relative to why this Rule ought to apply is found in correspondence by the Carrier to the General Chairman. Apparently, the issue was discussed in more detail in conference, albeit these details are never presented to this Board by the Organization. The Board cannot reasonably frame conclusions on this issue from arguments which are not presented by the moving party to a claim. Arguments on this issue presented in the Organization's submission, albeit brief, cannot be used either since arguments and information not proffered in the handling of a case on the property are improperly before this Board (Third Division Awards 22893, 24494, 26257, and 27328). The Board must seek direction, therefore, from the language of Rule 65 itself to determine if the relief requested by the Organization is appropriate. The Sidebar Letter states, in unambiguous terms, that Rule 65 "...deals specifically with the use of regularly assigned employees only in cases of emergency." If there was an emergency situation during the time-frame at bar the record does not address any of the circumstances surrounding such. While it is true that the Claimant worked the wrong position for a period of time, the Board cannot reasonably conclude from Rule 65, nor from the record, that penalty for doing so is time and one-half pay. The Board notes, as the Carrier does, that Rule 11 also provides no specifics with respect to sanctions should there be a violation of that Rule. Upon the record as a whole the Board must conclude, therefore, that the difference in rate of pay which the Claimant had received, and the rate he would have received had he worked Position No. 152 on May 1-6 and 8-10, 1989, is the proper relief. The Carrier is directed to pay the Claimant accordingly.

Form 1
Page 5

Award No. 29490
Docket No. CL-29608
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A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 21st day of January 1993.