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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

G. L. HART

Award No. 30644

Docket No. CL-30365

94-3-92-3-114

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Transportation-Communications
(International Union
(
(Atchison, Topeka and Santa Fe
(Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Union (GL-10662) that:

(1) Carrier violated the intent and provisions of the current Clerks' Agreement at Chicago, Illinois on July 2, 1990 and July 3, 1990, when it diverted Claimant Fitzgibbons from Position No. 6000 Word Processing Technician to perform relief receptionist duties and then failed and/or refused to properly compensate Claimant, and

(2) Claimant shall now be compensated for eight (8) hours' pay at the pro rata rate of \$104.70 for July 2, 1990 and July 3, 1990, as a result of such violation of Agreement rules."

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 employee 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.

Carrier admits, both in the on-property record as well as in its Submission, that Claimant "... was asked to relieve at the front reception desk" which was an exempt position under the Agreement. Claimant's regular assignment was Word Processing Technician in a pool of similar positions. She did not have a request on file to provide relief to short vacancies.

However, Carrier contends that Claimant was performing the duties of her regular assignment while relieving at the front desk as well as performing "... other duties as assigned" This latter phrase appears in the job description for her regular assignment.

In addition, Carrier contends, in its Submission, that Claimant regularly provided similar lunch and coffee break relief at the front desk, as well as in her own work group, without complaint or claim. However, close examination of the record reveals that this contention was not made during the handling of the matter on the property. It must, therefore, be ignored. It is well settled that we may not consider evidence and argument that was not exchanged by the parties in their development of the on-property record.

The record contains many opposing assertions about the nature of the relief Claimant performed and whether she was performing her regular assignment. The Organization supported its contentions with several factual statements by Claimant and co-workers. The Carrier's limited rebuttal evidence, in the form of a July 12, 1991 E-mail message, does not effectively meet the Organization's contentions. Indeed, paragraph 3 of the E-mail message essentially corroborates Claimant's contention that she was so busy with receptionist duties that she could not leave the desk. The remainder of the E-mail message provides only hypothetical argument and speculative conjecture.

On the record before us, we conclude that Claimant was effectively assigned to another position on the Claim dates. The Organization's evidence establishes that Carrier's action violated Rule 32(N), which precludes diverting a regularly assigned employee to perform relief work.

The remedy requested is in harmony with, and is not in excess of, the compensation provided in a December 7, 1977 Letter of Understanding developed to handle similar matters. The Claim, therefore, will be sustained.

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AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of December 1994.