

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31097
Docket No. CL-31014
95-3-92-3-923

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-10900) that:

The following claim is hereby presented to the company in behalf of Marlene Gioia. (86-91-DH016)

- (a) I claim five days' pay, 40 hours at \$13.04 per hour rate for not receiving a proper five-day abolishment notice. I own Extra Clerk Position No. 1, which is a regularly assigned position at Buffalo, NY and which has never been abolished.
- (b) The Carrier has violated Rule 13, Rule 1 and other Rules of the Clerks' Agreement effective September 24, 1990.
- (c) My claim is in compliance with Rule 28-2."

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.

In this claim, the Organization contends that Carrier violated the Agreement when Extra Board Position No. 1 at Buffalo was abolished without a five day notice. Accordingly, the Organization asks that the claim be sustained.

Carrier argues that it did not violate the Agreement. It maintains that on June 20, 1988, Carrier filed for relief under Chapter 11 of the Bankruptcy Code with the US Bankruptcy Court for the District of Delaware. On February 28, 1990, Carrier's Trustee-in-Bankruptcy commenced operating the railroad. On August 1, 1990, the ICC authorized the D&H Corporation/CP Railroad to operate the railroad under directed service. Clerical service was governed by the bankrupt Delaware and Hudson Railway Company Agreement.

Carrier points out that this Agreement contained provisions wherein Extra Boards were established and the position of Extra Clerk was recognized. It submits that these positions were non-guaranteed, that is, employees holding extra board positions were not entitled to any guaranteed earnings. Therefore, Carrier maintains that Claimant is not entitled to the five day notice.

Accordingly, and for these reasons, Carrier asks that the claim be denied.

After a review of the record evidence, we conclude that the claim must be denied. Under the terms of the Agreement dated September 24, 1990, there were no positions of Extra Clerk. In addition, all positions during the bankruptcy period were bulletined as temporary by the Trustee and Carrier had not abolished the Extra Board positions, but rather reclassified them as spare and unassigned.

Accordingly, and for the foregoing reasons, the claim is denied.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.