

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31256
Docket No. MW-30900
95-3-92-3-729

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to allow Machine Operator M. S. Gable to work his awarded position at Columbia, Pennsylvania on April 29, 1991 (System Docket MW-2095).
- (2) As a consequence of the violation referred to in Part (1) above, Machine Operator M. S. Gable shall be allowed a mileage expense of twenty-five cents per mile, for ninety-six (96) miles per day, for each day he was withheld from his assigned position from April 29 to May 8, 1991."

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.

The Claim at bar is that Rule 3 was violated when the Carrier did not release the Claimant to the position awarded effective April 29, 1991. The Organization argues that the Carrier unjustly held the Claimant on his prior position while allowing other employees to report for their new positions. In doing so, the Claimant was forced to travel further to his old position and past the newly awarded position. The Organization requests payment of the mileage expense accrued when Carrier denied the Claimant his rightfully awarded position.

This Board relates its Award only to those Rules and arguments properly raised while the dispute was on the property. The Organization's arguments in its Submission on Rule 23 are not properly before us. The Board concurs with the Carrier's denials of Agreement violation in this record for these reasons.

Rule 3, Section 3(d) states:

"Awards will be made and bulletin announcing the name of the successful applicant will be posted within seven (7) days after close of the advertisement.

This Rule shall not be construed so as to require the placing of employees on their awarded positions when properly qualified employees are not available at the time to fill their places, but physical transfers must be made within ten (10) days."

The facts are not disputed that Claimant held the position of Machine Operator Class 2 on the Surfacing Gang at Mt. Holy, Pennsylvania. He bid on and was awarded a Machine Operator Class 2 position at Columbia, Pennsylvania effective April 29, 1991. There is a record confirming that Claimant remained on his old position before release to his new position commencing May 8, 1991. These facts demonstrate that Claimant remained on his old position for nine (9) days.

There is no dispute in this record that the Claimant was Awarded the position within seven days of advertisement in line with the language of paragraph one, supra. This dispute centers upon paragraph two, supra. The Carrier's letter dated December 19, 1991 states that it may "... retain an employee on his position when qualified employees are not available at the time to fill their places..." and that the Carrier "properly applied" the Rule. We find no probative evidence to refute that argument.

We have further studied the record and Awards argued as pertinent by the Organization. Specifically, the Board notes that Public Law Board No. 3781, Award 24 is not on point. Here, as consistent with the language of Agreement Rule 3(d) the Claimant was physically transferred to his new position within ten (10) days. Important also, this Board fails to find any Rule of the Agreement cited by the Organization relating to the payment of mileage expenses when the Claimant is held on his old position without Agreement violation. Accordingly, the Claim is denied.

AWARD

Claim denied.

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 November 1995.