

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31506
Docket No. MW-32087
96-3-94-3-475

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

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

- (1) The Carrier violated the Agreement when it withheld Mr. D. Garchow from his awarded position on Force 6XC5 for more than fifteen (15) days and then failed and refused to compensate him therefor, as stipulated within the provisions of Section 18B of the SPG (January 6, 1992) Arbitrated Agreement [System File C-M-7798-SPG/12 (93-1052) CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Mr. D. Garchow shall be allowed three hundred dollars (\$300.00) for being held from his assigned position beyond the fifteen (15) day period provided in the Agreement."

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.

On a Carrier bulletin dated August 26, 1993, Claimant was awarded a Truck Driver position on SPG Force 6XC5 effective September 7, 1993. Claimant actually began working on the position on September 16, 1993.

The Organization filed this claim alleging a violation of Section 18 of the January 6, 1992 Agreement as amended on September 28, 1993. Paragraphs A and B of Section 18 read as follows:

- "A. Employees assigned to SPG positions will have the right to bid and displace to other SPG positions, within their assigned SPG, other SPGs, or positions bulletined on their home road consistent with their existing rights under their home road agreement. SPG employees awarded a position on another SPG or a position on the employees home road will be released to the new position within fifteen (15) calendar days following the awarding of the position.
- B. If the employee is not released to his new position within the fifteen (15) day period provided above, he shall receive three hundred dollars (\$300) per week held in addition to all allowances provided for herein, provided he has advised his Foreman of his assignment to such new position."

It is the position of the Organization that the Claimant was awarded the position on August 26, 1993, the date of the bulletin. Therefore, the Claimant should have been allowed to begin work on the position no later than September 10, 1993, and that when the Carrier held the Claimant on the old job it triggered the payment set forth in Paragraph B of Section 18.

The Carrier argues that the Claimant was awarded the job effective September 7, 1993 and by assuming the position on September 16, 1993, Section 18 was not violated.

The Organization has the burden to prove that the Agreement was violated. It is clear from the record the position was awarded effective September 7, 1993, not August 26, 1993. If the Organization's position was correct, the Claimant could have started work on August 27, 1993 even though the position did not exist. The Organization failed to provide any support to buttress its position. The Award cited by the Organization in support of its position specifically states that an employee must be assigned "within thirty (30) days from the date of bulletin." The Rule in question in this case does not contain such language.

This Board finds the Carrier's position to be tenable and reasonable. The Agreement was not violated.

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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 23rd day of May 1996.

LABOR MEMBER'S DISSENT
TO
AWARD 31506, DOCKET MW-32087
(Referee Richter)

The Majority's conclusion that the instant claim did not have merit is egregious and requires dissent.

This dispute arose over the Carrier's untimely release of the Claimant following his assignment to a truck driver position on an SPG gang. The Organization's position was that the clear language of Section 18A required the Carrier to release the Claimant to his new position within fifteen (15) calendar days of his being awarded the position. The Claimant was awarded the position on August 26, 1993. Hence, in accordance with the provisions of Section 18A, the Claimant was to assume the position by September 10, 1993. By failing to do so, the Carrier was required to compensate the Claimant in accordance with Section 18B.

In its opinion, the Majority held:

"The Carrier argues that the Claimant was awarded the job effective September 7, 1993 and by assuming the position on September 16, 1993, Section 18 was not violated.

The Organization has the burden to prove that the Agreement was violated. It is clear from the record the position was awarded effective September 7, 1993, not August 26, 1993. If the Organization's position was correct, the Claimant could have started work on August 27, 1993 even though the position did not exist. The Organization failed to provide any support to buttress its position. The Award cited by the Organization in support of its position specifically states that an employee must be assigned 'within thirty (30) days from the date of bulletin.' The Rule in question in this case does not contain such language."

The Majority clearly erred in determining that the position in question was awarded on September 7, 1993 instead of on August 26, 1993 and that the fifteen (15) calendar day time limit for releasing the Claimant to his new position began on September 7, 1993 instead of on August 26, 1993. The Majority's determination is contrary to the clear language of Section 18A and, in effect, serves to alter the rule in a manner not contemplated by the parties. It is a hornbook principle that this Board does not have the authority, under the guise of interpretation, to add or subtract to the terms of the collective bargaining agreement. The plain language of Section 18A stipulates that SPG employees awarded a position on another SPG or a position on the employee's home road will be released to the new position within fifteen (15) calendar


days following the awarding of the position. In this instance, August 26, 1993 was the date the Carrier issued Bulletin No. S-0706 advising the Claimant that he was the successful bidder for the position of Truck Driver 6XC5-13D. The award bulletin (as it was repeatedly referred to by the Carrier in its submission) further advised that the position would begin on September 7, 1993. Had the Claimant been released to assume his new position on September 7, 1993, there would have been no basis for a claim since the Carrier had until September 10, 1993 to release him from his former position. It is clear that the position involved here was awarded via bulletin on August 26, 1993. That the assignment was scheduled to become effective and/or begin on September 7, 1993 does not serve to alter that fact. Section 18A does NOT read "SPG employees awarded a position on another SPG or a position on the employee's home road will be released to the new position within fifteen (15) calendar days following the date the position is scheduled to begin." However, that is exactly the erroneous interpretation placed by the Board in this instance.

Further evidence of the Majority's failure to correctly consider the issue involved here is found in its statement that, "*** If the Organization's position was correct, the Claimant could have started work on August 27, 1993 even though the position did not exist. ***" In response thereto, several points must be made. First, it was never the Organization's position that the Claimant was required to be placed on his new assignment on August 27, 1993. Second, the Carrier never made such an assertion during the handling on the property or within its submission to the Board. Third, the Organization always maintained that the Claimant was entitled to be placed within fifteen (15) days of August 26, 1993. When the position was scheduled to begin was always under complete control of the Carrier. In fact, that is precisely why the fifteen (15) calendar day time limit was negotiated into Section 18A. That time frame allows the Carrier ample time for planning its work schedules and gang assignments. The critical point therefore is not whether the position exists on the date the position is awarded, but rather whether the individual is released to assume the position within fifteen (15) calendar days following the awarding of the position.

- Labor Member's Dissent
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Inasmuch as the reasoning found within Award 31506 was not drawn from the clear language of the Agreement, it is an anomaly and worthless as precedent. Therefore, I dissent.

Respectfully submitted,


Roy C. Robinson
Labor Member