

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33171
Docket No. CL-31829
99-3-94-3-159**

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: (
(The Atchison, Topeka and Santa Fe Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11023) that:

- (a) Carrier violated the rules of the current Clerks’ Agreement at Kansas City, Kansas, on December 29, 1989, when it failed and/or refused to properly award a bulletin position to the senior bidder; and**
- (b) R. R. McCoy shall now be placed on Position No. 6420 and shall be compensated for eight (8) hours’ pay at the pro rata rate of Position No. 6420 for each work day of this position commencing December 29, 1989, and continuing until Claimant is placed on Position No. 6420, in addition to any other compensation Claimant may have received.”**

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 were given due notice of hearing thereon.

The subject of this claim is whether Carrier violated the Rules of the Agreement when it assigned a junior employee to Zone Board, D.O.C., Position No. 6420 at Kansas City, Kansas, instead of the Claimant on December 29, 1989.

Before turning to the merits, the Board will address a procedural issue raised on the property wherein Carrier argued there was an E.E.O.C. Consent Decree which settled and released it of any further responsibility regarding this claim. Upon presentation to the Board the Carrier abandoned that argument in its Submission, thus it will not be considered.

The duties of Position No. 6420 included providing relief to the Communications Coordinators in the Division Operations Center and Traffic Controllers at Turner and AY Tower at Kansas City, Kansas. In Carrier's Job Bulletin No. 176 it stated that "Applicants must possess sufficient fitness and ability, have capability of operating D.O.C. data processing equipment and must have successfully passed the General Code of Operating Rules."

A review of the record indicates that Claimant had successfully worked as a Traffic Controller at Turner, Kansas, which was one of the positions that Position No. 6420 relieved for short vacancies and that she had previously passed the test covering the General Code of Operating Rules.

Carrier denied Claimant's application on the basis that Claimant had been out of service for over six months and had not successfully passed the annual Rules examination for the current year.

This Board previously decided in Third Division Award 26563 involving the same parties an almost identical dispute as follows:

"... the Carrier did not qualify the Claimant solely because the Claimant had not worked the job within the past six months. However the record does not contain sufficient evidence that the job had changed so substantially since the Claimant had last performed it as to render the Claimant unqualified. Moreover, the Board finds that a blanket six-month rule is unreasonable and arbitrary in that many jobs do not change substantially over that period. Hence, if the Carrier wanted to deny the

Claimant the job, the Carrier had the burden to show that this particular job had changed so substantially in that short period of time that the Claimant was now unqualified to perform it. Since this was not done, the Claimant should have been assigned the work. Consequently, the Claim must be sustained."

The reasoning of Award 26563 is applicable to the instant dispute and will be followed because there is nothing in the record to indicate that the positions relieved by Position No. 6420 were significantly changed since the last time Claimant had worked as a Traffic Controller.

It is the Board's determination that the Agreement was violated and the parties are advised to make a joint check of Carrier payroll records to determine the number of days Claimant held a lower paying position than Position No. 6420. Claimant is to be made whole for any loss of earnings for all time that a junior employee occupied Position No. 6420. If and when a senior employee to Claimant became the incumbent of Position No. 6420, or the position was abolished, or Claimant is assigned Position No. 6420 Carrier's liability ceases.

AWARD

Claim sustained in accordance with the Findings.

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 25th day of March 1999.