

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33268
Docket No. CL-33882
99-3-97-3-395**

The Third Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr. when award was rendered.

PARTIES TO DISPUTE: (
(Transportation Communications International Union
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11765) that:

- 1. Carrier violated the Clerical Agreement on Sunday, January 7, 1996, when it disallowed H. L. Frady, ID 142487, to work his regularly assigned position, No. 200, from 3:00 p.m. to 11:00 p.m.**
- 2. Carrier shall compensate Clerk Frady \$120.56 in addition to any other compensation received or entitled.”**

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.

On January 7, 8 and 9, 1996 the eastern United States experienced a severe snow storm that forced the Carrier to curtail operations. Charlotte, North Carolina, was

affected. On January 7 at approximately 12:30 P.M. Claimant, who was the incumbent of a clerical position at Charlotte, attempted to contact the Charlotte Yard Office to determine driving conditions around the yard. Receiving no response, Claimant called the Carrier's office in Jacksonville, Florida, to determine such conditions. At approximately 12:45 P.M. the Jacksonville office contacted Claimant and informed him that the Trainmaster had instructed Claimant not to report for work. The claim in this case followed.

The Carrier denied the claim. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. The dispute remains unresolved, and it is before the Board for final and binding determination.

The Organization bases the claim upon Rules 19(b)(Basic Day) and 29(c)(Basis of Pay and Maintenance of Earnings) of the applicable schedule Agreement. The theory of the Organization's case is that there is no provision in the applicable schedule Agreement allowing the Carrier to annul clerical assignments, in the absence of which Rule 19(b) and 29(c) are applicable.

The Carrier maintains that its actions on January 7, 1996 were proper under Rule 17(b) of the applicable schedule Agreement, which allows the Carrier under emergency conditions, such as heavy snow, to abolish positions or make force reductions without prior notice. Citing Third Division Award 31466 on this property, between the same parties and interpreting Rule 17(b), the Carrier maintains that the snow emergency in this case met all conditions of the Rule which forces the conclusion that the Carrier did not violate the Agreement as alleged by the Organization.

Pointing to a statement by a Carrier Officer denying an appeal by the Organization that Claimant's position was not abolished under the emergency provisions of the applicable schedule Agreement, the Organization argues that Rule 17(b) was not the basis for the Carrier's action in refusing to allow Claimant to work his position on the claim date. In fact, urges the Organization, there was no real emergency, which is evidenced by the fact that other employees worked at Charlotte on that date.

It must be borne in mind that there is no dispute a massive snow storm struck the east, including Charlotte, North Carolina, on the claim date. The Organization freely admits that fact.

The initial denial of the claim by a local Carrier Officer states that the snowstorm so affected Charlotte that the vast majority of train and office operations were suspended and that many employees of all crafts, including Claimant, were notified not to report for service. The denial clearly states that Claimant's position was abolished under Rule 17. On appeal another Carrier Officer stated that Claimant's position was not abolished under the emergency provisions of the Agreement. However, that statement appears to be based upon an allegation in the rejection of the appeal that Claimant voluntarily had laid himself off. Claimant denies that he did so. In its written Submission to the Board the Carrier alludes to confusion during the appellate process, which is reflected in the letter relied upon by the Organization. Our review of the record persuades us that the Carrier's characterization of the appeal determination as a product of confusion is the correct one.

Award 31466 stands for the proposition that under Rule 17(b) force reductions and abolishments are limited to locations affected by the suspension of Carrier operations. The record in this case supports the conclusion that Charlotte, North Carolina, was so affected on January 7, 1996. It follows that the Carrier had the authority to annul Claimant's assignment, which forces the conclusion that the claim in this case is without merit.

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 6th day of May 1999.