

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33507
Docket No. CL-35068
99-3-98-3-785

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

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12204) that:

I. Claim of the System Committee of the TCU (ST-97-81) :

(a) I am filing claim on behalf of Mr. Dana Bock, crew dispatcher, North Billerica, Massachusetts. Claim is for eight (8) hours at the rate of time and one half, commencing September 21, 1997, for each and every day position CD-1 worked. This claim is continuous for each and every day position CD-1 works until such violation is corrected.

(b) Carrier violated the Agreement when it awarded position CD-1 to Mr. Bock on September 21, 1997, yet allowed Mr. Robert Silk who owns position CD-2 to assume hours of position of CD-1. The Carrier changed hours of these position without proper notice or negotiations with the Organization (TCU).

(c) Rules violated are 2.1, 2.2, 4.1, 4.2, 4.3, 4.4, 4.5, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 24.1, 24.2, 24.3, 24.4, 25.1, 25.2, 26.1, 27.1, 27.2, 28.1, 28.2, 28.3 and all other rules of this Agreement.

(d) Claim is valid and must be paid.

II. Claim of the System Committee of the TCU (ST-97-84):

(a) I am filing claim on behalf of Mr. H. O. James, Jr. TSR, North Billerica, Massachusetts. Claim is for eight (8) hours at the rate of time

and one-half, commencing September 21, 1997, for each and every day position (PEP) CD-2 works. This claim is continuous for each and every day position CD-2 works until violation is corrected.

(b) Carrier violated the Agreement when it awarded position CD-1 to Mr. Dana Bock, yet allowed Mr. Robert Silk who owns position CD-2 to assume hours of position CD-1. The Carrier did this without notice or negotiations with the Organization (TCU).

(c) Position CD-2 should revert back to full scope because Mr. Silk is no longer working this position, he is actually working position CD-1.

(d) Rules violated are 2.1, 2.2, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 24.2, 24.4, 25.1, 26.1, 27.1, 27.2, 28.1, 28.3, and all other rules of this 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 were given due notice of hearing thereon.

On September 10, 1997 the Carrier advertised Position CD-1 for bid. Position CD-1 is a partially excepted position. In essence it gives the Carrier the right to select who gets the job regardless of seniority. After the job was awarded the Carrier changed the hours and rest days of Position CD-1 and CD-2. On November 17, 1997 the Organization filed this claim.

Position CD-2 is also partially excepted, but when the incumbent leaves the position it becomes fully covered. The Organization argues that the Carrier has circumvented the Agreement by changing the starting time and rest days of the two jobs.

The Carrier takes the position it had the right to change the starting times of the jobs. It argues that only Rule 14, "Displacement Rights" pertains, and in particular Rule 14.5 which reads:

"14.5 When the assigned starting time or the assigned quitting time of a regular position is changed more than one hour in one change, or is changed more than one hour in the aggregate since last advertised, or when either or both rest days are changed, or when the location of the position is changed, such position will be declared vacant and will be advertised for bid. The Employee affected will, within seven calendar days from the date of change (or if then absent from duty, within ten working days after again reporting for duty), upon proper written notice, exercise seniority rights to any position held by a junior Employee, the latter to have displacement rights in the same manner."

However, as the Carrier points out, Rule 14 does not apply to partially excepted jobs.

While someone might take the position the Carrier is sharp-shooting the Agreement to keep its excepted positions, it did not violate the Agreement. The Carrier has the right to change starting times, a position not disputed by the Organization. Rule 14 is the only rule that requires jobs to be vacated, if starting times are changed, and the Organization does not argue that the positions in dispute are not excepted from this Rule.

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 22nd day of September 1999.