

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33835
Docket No. CL-33258
99-3-96-3-731**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Illinois Central Railroad)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11455) that:

1. Carrier violated the Agreement between the Parties when it failed and refused to place Ted Noll, III, on his position acquired by bid, Position No. 1288, in violation of Rules 8, 9 and others of the Clerks' Agreement.
2. Carrier shall now be required to compensate Ted Noll, III, in the amount of four (4) hours, at the pro rata rate, beginning July 4, 1995, and continuing five (5) days per week, until October 20, 1995.”

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 May 24, 1995, the Carrier advertised a vacancy for a Chief Clerk in Decatur, Illinois (8:00 A.M. to 4:00 P.M.). Claimant applied and, by bulletin dated June 1, 1995, was awarded the position. On June 1, 1995, the Carrier advertised the position from which Claimant bid (TCS Clerk in Decatur, 3:00 P.M. to 11:00 P.M.). After repeated attempts, Claimant's former position was not assigned. Claimant was not permitted to assume the Chief Clerk position and was held in his TCS Clerk position. The Chief Clerk position was filled with an extra employee. As provided in Rule 8(b), Claimant was paid an additional \$3.00 per day for the time he was held in the TCS position. Claimant was never allowed to assume the Chief Clerk position. Claim was filed seeking four hours per day at the pro rata rate for Claimant commencing July 4 through October 20, 1995 when the Chief Clerk position was abolished.

Rule 8(b) provides:

“(b) An employee awarded a bulletined position will be transferred promptly to such position after issuance of assignment bulletin. An employee not so transferred within three calendar days after date of assignment bulletin will thereafter receive the rate of the position occupied or the position to which assigned, whichever is higher, and in addition will be paid \$3.00 per day for each day worked until transfer has been made.”

Claimant was not “transferred promptly.” Instead, Claimant was held in his former position for approximately four and one-half months after being awarded the Chief Clerk position. Rule 8(b) was therefore violated. See Third Division Award 14223 where employees awarded positions were improperly held off with the Board stating that the relevant Rule “. . . provides that an employee awarded a bulletined position or vacancy will be transferred promptly to such assignment after issuance of the assignment bulletin . . . [and] Claimant[s] had a contract right to these jobs.”

The Carrier's options under Rule 8(e) concerning handling unfilled vacancies do not change the result. Rule 8(e) provides:

“(e) When a bulletined new position or vacancy is not bid in or assigned to an employee in service, the company shall fill the vacant position by recalling in seniority order the qualified furloughed employee at the location involved. Failing to fill the vacancy in this manner, the company may exercise the following options to fill the vacancy:

(a) Assign the junior qualified extra employee in reverse seniority order at the location involved. For this purpose, all employees will be considered as extra employees at the location who have designated the location under the provisions of Rule 9(d)(1) or Rule 15(g), in addition to those headquartered at the location.

(b) Hire a new employee.

(c) Assign the senior qualified furloughed employee(s) in seniority order at the nearest location in the seniority district to the location where the vacancy exists.

(d) Assign the junior qualified extra employee(s) in reverse seniority order at the nearest location in the seniority district."

Holding Claimant in his former position for approximately four and one-half months is not one of those options. To find otherwise would read out of the Agreement the requirement under Rule 8(b) that employees awarded a bulletined position "will be transferred promptly."

Third Division Award 32177 does not change the result. That case involved a claim by an Extra Board employee asserting a violation of Rule 8(e) when the Carrier did not assign that employee to a bulletined position for which no bids were initially received. The Board properly concluded that because Rule 8(e) states that "the company may exercise the following options to fill the vacancy" [emphasis added], there was no obligation to fill the vacancy as the employee desired. This is not a Rule 8(e) case. This is a Rule 8(b) case which states that "[a]n employee awarded a bulletined position will be transferred promptly to such position after issuance of assignment bulletin." The phrase "will be transferred promptly" leaves little to discretion.

With respect to the remedy, and relying upon Rule 34, the Organization asserts that Claimant is entitled to four hours per day commencing July 4, 1995. Under the circumstances, we find such a remedy to be reasonable. The Chief Clerk position that Claimant was awarded and not permitted to transfer to had hours of 8:00 A.M. to 4:00 P.M. Claimant was held in the TCS Clerk position which had hours of 3:00 P.M. to

11:00 P.M. By not permitting Claimant to work his awarded position, Claimant was deprived of the better hours of the Chief Clerk position and was required to work hours outside of his awarded position. The starting point for the remedy (approximately one month after Claimant was awarded the position) is a reasonable period of time for the Carrier to have transferred Claimant "promptly" as required by Rule 8(b). That liability ended when the Chief Clerk position was abolished on October 20, 1995.

AWARD

Claim sustained.

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 21st day of December 1999.