

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35767
Docket No. CL-35721
01-3-99-3-694**

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Alton and Southern Railway**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-12647) that:

- (1) The Carrier violated Rule 9, the Extra Board Agreement, and any associated rules of the TCU Agreement when on July 9, 1998, it removed clerical employee A. E. Morris from his regular assigned Extra Board position and assigned him to the vacant position of Abstract #3, which had gone 'no bids received' on Clerical Bulletin #4952.**
- (2) The Carrier shall now be required to compensate Morris at the pro rata rate of \$16.11 per hour for eight (8) hours each date of July 14, 15, 21, 28 and August 4 and 5, 1998. These dates represent dates that Morris was improperly assigned the rest days of Tuesdays and Wednesdays on Abstract #3, days he would properly have been entitled to work on his regular assignment of Extra Board Clerk. Carrier shall also be required to compensate Morris at the pro rata rate of \$16.11 per hour for four (4) hours each on July 19, 26 and August 8 and 9, 1998. These dates represent the days in which he worked on Abstract #3 position on days (Saturday and Sunday) he would have completed his Extra Board week which is scheduled from Monday through Sunday."**

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.

In July 1998, the Carrier advertised a vacancy on Abstract Relief No. 3, a clerical position. Because no bids were received for this vacancy, the Carrier assigned the Claimant to the position. The Claimant, at the time, was the only Extra Board employee qualified to fill the vacancy, according to the Carrier. The Organization argues the Claimant could not be removed from the Extra Board to fill this vacancy because, as an Extra Board employee, the Claimant held a regular assignment. Under Rule 9(C), says the Organization, the appropriate person to fill the vacancy would have been the senior qualified extra unassigned employee. That Rule reads as follows:

“Vacancies and new positions known to be of thirty (30) or more days duration shall be bulletined promptly to all employees for a period of three (3) days showing duties, location, title, days and hours of assignment, and rate of pay, with copies to the Division and General Chairmen. Applications will be considered in seniority order. In the event no bids are received, the senior qualified unassigned employee will be assigned. Assignment bulletin will be posted for a period of three (3) days.”

In support of its position that the Claimant was an assigned employee, rather than unassigned, the Organization cites the following provisions of the Extra Board Agreement:

“1.(b) Positions on the extra board will be bulletined and assigned in the usual manner as provided in Rule 9(C).

10. Employees exercising seniority to the extra board will displace the junior employee and be placed on the extra board in accordance with their seniority. The employee so displaced will be removed from the extra board immediately except that in the event he is working a vacancy at the time, he will be removed from the extra board upon completion of that vacancy. Employees assigned to advertised

vacancies on the extra board will be placed on the extra board in accordance with their seniority.”

The Carrier argues it was privileged to move the Claimant to this position on a temporary basis because he was the only qualified extra employee available to perform the work. In defense of its position, the Carrier cites Rule 6, reading as follows:

“Rule 6 - Transfer and Arbitrary Allowance

(a) Clerks will not be permitted to change positions without proper authority, nor will they be required to change positions except temporarily and for good and sufficient reasons.

(b) Employees temporarily or permanently assigned to higher rated positions shall receive higher rate while occupying such positions. Employees temporarily assigned to lower rated positions shall not have their rates reduced.”

The Board finds that Rule 6 recognizes the Carrier’s right to temporarily reassign employees under certain circumstances. Further, we find the Carrier had a good and sufficient reason for doing so. Its actions, therefore, were not in violation of the Agreement. We note that the Carrier also had the right to simply assign the Claimant to fill this vacancy from the Extra Board, which would have yielded the same result. In either case, we must deny the claim.

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 24th day of October, 2001.