

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36394
Docket No. CL-36408
03-3-00-3-678

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Burlington Northern Santa Fe Railway

STATEMENT OF CLAIM:

“Claim of the System Committee of the Union (GL12672) that:

- 1. Carrier violated the Working Agreement when it denied employee S. Slinkard, Ft. Worth, Texas, his displacement effective September 26, 1998, and failed to allow him to go to said displacement.**
- 2. Carrier must now compensate clerical employee S. Slinkard eight (8) hours pay at the straight time rate at Wage Grade 13 beginning September 26, 1998, and continuing each and every day thereafter until such time as Carrier releases employee Slinkard to his displacement afforded him under the Working 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.

In September 1998, clerical employee S. Slinkard, ("Claimant"), was regularly assigned to Train Reporting Position No. 6666 in the Service Support Center in Fort Worth, Texas, with assigned rest days of Tuesday and Wednesday. The Carrier gave the Claimant timely notice, in accordance with Rule 34 of the Agreement, that it was changing the rest days of Position No. 6666 to Thursday and Friday, effective Monday, September 14, 1998. Rather than accept these changed rest days on Position No. 6666, the Claimant thereupon timely submitted a 36-hour advance written notice to the Carrier that he was exercising his seniority rights to displace a junior employee on a different position, effective September 26, 1998.

Position No. 6666 was bulletined, showing the new rest days, and was assigned to employee M. Edwards. However, M. Edwards was held in his former position until October 23, 1998, to train his replacement on the position he held prior to bidding to Position No. 6666. As a consequence, the Carrier required the Claimant to continue working Position No. 6666, taking the rest days he did not desire to take, until October 23, 1998, when M. Edwards was released to take Position No. 6666 and the Claimant was released to take the position to which he served timely notice of displacement, effective September 26, 1998.

On October 4, 1998, the instant claim was submitted on "a continuing basis," beginning September 26, 1998, and continuing until such time as the Carrier released the Claimant and allowed him to work the position he displaced upon due to the change in his assigned rest days. In short, the time period covered by the claim is September 26, 1998 through October 23, 1998. The language of Rule 34 which governs this case reads in pertinent part as follows:

* * *

- "B. Regular starting time shall not be changed without notice to employees affected, at least thirty-six (36) hours in advance of the new starting time. No starting time will be changed for less than five (5) consecutive days. When the established starting time of a regular or relief position is changed in the aggregate in excess of one (1) hour during a period of twelve (12) consecutive months or where headquarters of a position is moved to a different station, the incumbent may, within ten (10) days thereafter, upon thirty-six (36) hours' advance written notice, exercise seniority rights to any**

position held by a junior employe pursuant to Rule 18. Employees affected thereby may exercise their seniority rights in the same manner.

* * *

- C. **Assigned rest days will not be changed without at least five (5) working days' advance written notice to the employes affected. When either or both assigned rest days of a regular or relief position are changed, the incumbents may exercise seniority rights outlined in paragraph B of this rule and other employes affected may exercise their seniority rights in the same manner."**

The plain language which appears in Rule 34.C has been the subject of *authoritative interpretation* by the Board in Third Division Award 22220, which cited and reconfirmed the precedent value of Third Division Awards 12224 and 12459. We are persuaded that the language of Rule 34.C, inclusive of the arbitrable gloss from these authoritative precedent decisions supports a decision that the Carrier violated the Agreement in the facts and circumstances presented on this record. Although we sustain the Organization's Rule 34.C violation, we are persuaded of the correctness of the Carrier's position, advanced on the property, that the monetary claim for eight hours' pay each day of the claim period September 26 - October 23, 1998, in addition to the compensation the Claimant received for working position No. 6666 is excessive.

Rather, the appropriate compensatory damages for the proven violation is for the Carrier to compensate the Claimant for the period September 26, 1998 through October 23, 1998, in an amount equal to the difference, if any, between the rate of pay for Position No. 6666 and the rate of pay for the position to which he served notice of displacement, effective September 26, 1998; plus an amount equal to the difference between the overtime rate and the straight time rate of Position No. 6666, for each hour of work which he performed on the former Tuesday and Wednesday rest days of Position No. 6666.

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 18th day of February 2003.