

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36741
Docket No. CL-37252
03-3-02-3-260

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12811) that:

1. The carrier violated the rules of the parties' Agreement dated July 27, 1976 effective September 1, 1976, particularly Rules 2-A-1, 3-C-1, 3-E-1, 4-C-1, among other applicable rules, when on or about July 7, 2000, without agreement of understanding with the TCU Organization, it arbitrarily removed employee Argonnes from her position of Secretary, Engineering/Track, M of W Base, Adams, New Jersey and placed her on a non-bulletined position at 400 W. 31 Street, New York City, New York.
2. The Carrier shall be required to restore employee Argonnes to her assigned position of Secretary, Adams, New Jersey and be compensated eight (8) hours each day thereafter commencing July 7, 2000 in addition to the eight hours per day already received, effective July 7, 2000 and each day, such payment to continue each and every day until this dispute is resolved and proper adjustment is made. Employee Argonnes shall also be compensated for travel time between location of her assigned Secretary position Adams, New Jersey to and from the location of New York City, New York she was arbitrarily required to work.
3. The Carrier violated the decision of October 1943 of the United States Supreme Court that an individual employee subject to a collective bargaining agreement cannot properly disregard or negate the agreement's provisions by his own agreements with his

employer. *Order of Railroad Telegraphers v. Railway Express Agency* (1944) (321 U.S.342). The National Railroad Passenger Corporation (NEC) entered into agreement with employee Argonnes (TCU Organization having no part) to be taken off her Secretary position and assigned to a non-bulletined position in New York City, New York in arbitrary defiance of the applicable collective bargaining agreement.

4. Claim is further made that Carrier violated the provisions of Rule E 7-B-1 when it failed to notify the reason for disallowance on all aspects of the claim."

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.

The Claimant was hired by the Carrier on December 16, 1999, as a clerical employee. In early May 2000, the Claimant filed a workplace sexual harassment complaint against her Supervisor. While her complaint was being investigated, the Claimant was asked if she wanted to work another secretarial position in the Engineering Department in New York. The Claimant agreed and began work in New York.

On July 7, 2000, the Claimant was advised by Carrier authorities that her sexual harassment charges were not supported by the investigation. On August 27, 2000, the Organization filed a claim alleging the Claimant had been improperly moved from her bump and bid position at Adam, New Jersey, M & W Base. The claim requested eight

hours additional pay per day and travel time between New Brunswick, New Jersey, and New York City beginning July 7, 2000, and continuing until the violation ceased. The basic claim was denied by Manager Linda Murphy, but Murphy agreed to the Claimant's travel time from July 10, 2000, until October 24, 2000, when the Claimant was bumped from her Adam, New Jersey, position and took another position in the New York City area. The Claimant resigned from the Carrier's service on January 26, 2001.

The Board reviewed the record in detail. It has taken note of the Organization's claim outlined in Paragraph 3 of the Statement of Claim cited above. As a result of our review the Board has concluded that the Carrier's attempted in this case to act in the best interest of the Claimant by giving her an opportunity to work in a non-Agreement position in New York City while her sexual harassment charges were being investigated. We find no proven Agreement violation in this instance. The Board, however, has concluded that had the Carrier conferred with the District Chairman on the move of the Claimant to work in New York City, the instant case may never have arisen.

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 22nd day of October 2003.