

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36789
Docket No. CL-37363
03-3-02-3-364

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-12900)
that:

- A. Carrier violated the Amtrak Clerks' Rules Agreement particularly Rule 9 paragraph A and B and others when it failed to treat Ms. McKay's transfer request to a District 1 Ticket Clerk position; filed in February of 2000; as a bid to such position and instead hired new employees and honored other transfers to fill a Ticket Clerk class.
- B. Claimant shall now be paid the difference between the grade 9 she is currently being paid and the ticket grade 8 that she should be making starting on August 25, 2000 and continuing each and every day until Claimant is placed on a Ticket Clerk position. Also, Claimant be paid all the overtime she would have stood for; starting on the same date; if this violation had not occurred. New hire S. Weldon began working in the Washington Ticket Office on the above mentioned date.
- C. Claimant's seniority is adjusted to reflect her proper number in District One, per Rule 9, paragraph (b) on account of this violation.

- D. Claimant has made the request to transfer according to Rule 9 and should have been offered a position in the Class.
- E. This claim has been presented in accordance with Rule 25 and should be allowed as presented."

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.

Claimant K. McKay entered service on August 31, 1999. At the time of the incident that gave rise to this case, she was furloughed in the Washington, D.C., area. On February 29, 2000, pursuant to Rule 9 of the Agreement covering her employment, she filed a job transfer request with the Human Resources Department. On October 23, 2000, the District Chairman filed a claim asserting that on August 25, 2000, the Carrier hired a new employee for a Ticket Clerk position in Washington Station. On November 22, the Carrier's Management denied the claim and advised the Organization that the Carrier had made numerous attempts to assist the Claimant in her efforts to transfer to a permanent position in Northeast Corridor Seniority District 1. The Carrier's efforts were frustrated by the Claimant's refusal to accept guaranteed Extra Board positions. The parties processed the claim, with each side maintaining its position until the case was progressed to the Board.

The Board reviewed the record and has concluded that the weight of the credible evidence favors the Carrier's position that the Claimant refused numerous offers of Extra Board positions because of the uncertain connection with an Extra Board's work schedule. Having refused bona fide offers of a position, the Claimant lost her claim to a transfer without renewing it. This record reveals that the Claimant did not attend a Ticket Clerk's training class on January 22, 2002, but chose to wait until the instant claim was decided before she established a seniority date as a Ticket Clerk. The Claimant has, at her own peril, refused to accept positions she was not completely pleased with, waiting for her ideal job to come up. Rule 9 quoted below grants a transferring employee a number of advantages over new hires. It also clearly indicates that a rejection of a job offer causes the employee's request for transfer to expire.

At issue is Rule 9, Voluntary Transfer:

“(a) An employee who has one year or more of seniority in a seniority district may request transfer to a permanent position in some other seniority district provided:

- (1) He possesses the necessary fitness and ability for the position requested;**
- (2) Request is made in writing through his supervisor to the employing officer at the specific location in the seniority district to which he desires to transfer with copy to employing officer of the seniority district from which he desires to transfer. A brief resume of his service record must accompany the request;**
- (3) Such request will expire on the employee's rejection of a job offer in response to his request;**
- (4) An application will be considered as a bid even though it is received in the seniority district prior to the posting of a bulletin.**

- (b) An employee requesting transfer shall be given preference in seniority order only over employees hired in the district after the date the request was received by the employing officer in the new district."

The Board can find no basis in this record for concluding that Carrier officials prevented the Claimant in any way from obtaining a legitimate transfer into Seniority District One. The Board in fact finds considerable shortcomings in the position taken by the Claimant.

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 29th day of December 2003.