

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37206
Docket No. MW-36659
04-3-01-3-198

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to pay Foreman M. A. Greco the meal allowance and weekend travel allowance for the period beginning February 2, 2000 through February 6, 2000 [Carrier's File 12(00-0235) CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Greco shall now be paid the meal allowance of one hundred six dollars and twenty-five cents (\$106.25) and the travel allowance of fifty dollars (\$50.00)."

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.

This claim involves the Carrier's delay in permitting the Claimant to assume a newly awarded position. The Claimant had been assigned as a Foreman to a stationary gang headquartered at Fulton, New York, when, by notice of January 18, 2000, his position was abolished as of January 31, 2000. The Claimant was the successful bidder to a Track Foreman position on a mobile brushcutting gang with floating headquarters on the Albany Service Lane effective February 2, 2000. Both positions had workweeks of Monday - Friday, with Saturday and Sunday as rest days. The Carrier held the Claimant at his former headquarters until the end of the day on Friday, February 4, 2000, resulting in his not reporting to his new assignment until February 7, 2000. There is no record of the Carrier making any attempt to obtain other qualified employees to fill the position the Claimant was held on. Because the Claimant's new position makes him eligible for expenses and weekend travel allowance, this claim seeks reimbursement for the expenses to which the Claimant would have been entitled had he been permitted to assume his bid position on February 2, 2000.

The Organization contends that the Carrier cannot justify holding the Claimant in his old position, especially because it had been abolished, without any attempt to fill it with other qualified employees, and its doing so for a period over five days violated Rule 3, Section 3(d) citing Third Division Awards 32915, 31265, and 29578. The Organization notes that, under the terms of Rule 12, the Claimant is entitled to be compensated as if he started and ended his shift at his advertised headquarters, thereby making him eligible for meal allowance and weekend travel expense under Appendices G and U respectively, relying on Third Division Awards 31439, 30400, and 29625 as well as Public Law Board No. 3781, Award 24. The Organization asserts that the Carrier's Submission contains all new argument, and that the only defense the Carrier made on the property was that it was entitled to hold the Claimant over and did not violate Rule 3 because he was held only for three days.

The Carrier argues before the Board that this is an invalid claim since the Claimant is not entitled to reimbursement for expenses not incurred between February 2 and 6, 2000, citing Third Division Awards 32336, 28802, 26357, 26055, and 24172 as well as Public Law Board No. 5142, Award 2. On the property the Carrier contended that it did not violate Rule 3 because the Claimant was held on his old assignment for only three days and was released on February 4, 2000, all of which the Carrier had a right to do.

Initially we note that, while the Carrier's argument concerning the propriety of awarding reimbursement for expenses not incurred may have application in certain circumstances, it was not mentioned on the property nor relied upon as a basis for denial of this claim, and thus cannot be considered by the Board in this case. A careful review of the record on the property convinces the Board that the Organization sustained its burden of proving that the Carrier violated the Agreement under the specific factual circumstances presented in this case. The record does not show that the Carrier made any attempt to fill the position that it held the Claimant on between February 2 - 6, 2000 with properly qualified employees as required by Rule 3, Section 3(d) prior to doing so. In fact, it is unclear what position the Carrier actually held the Claimant on, because his position had been abolished on January 31, 2000. In any event, the Carrier's impermissible action prevented the Claimant from reporting to his bid position on the mobile brush cutting gang on its February 2, 2000 effective date, thereby requiring that it compensate him under Rule 12 as if he had properly assumed such position. See Third Division Awards 30400, 29625, and 29578.

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 28th day of September 2004.