

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41183
Docket No. CL-41506
11-3-NRAB-00003-110102**

The Third Division consisted of the regular members and in addition Referee Martin Fingerhut when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Indiana Harbor Belt Railroad Company**

STATEMENT OF CLAIM:

**“Claim of the System Committee of the Organization (GL-13211)
that:**

**The following claim is being presented to the Carrier in behalf of
Melody Sears.**

- A. Carrier violated the rules of the current Clerks’ Agreement particularly Rules 25 and 33 as well as the Attrition Agreement at IHB Railroad on January 28, 2010 at approximately 5:00 PM when it furloughed Mrs. Melody Sears’s (sic) after being displaced from her position of Extra Board Clerk.**
- B. Claimant Sears shall now be compensated for 8 hours at the straight time rate of \$208.98 for the Extra Board position per day for each and every day she is withheld from service.**
- C. Carrier shall now be required to reimburse claimant for any out-of-pocket medical, dental or surgical expenses to the extent that such payment would have been payable by the current insurance provided by the Carrier under the terms of the governing agreement.**

D. This claim has been filed in accordance with Rule 13 and should be allowed.”

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.

On January 28, 2010, the Claimant was displaced from her clerical position on the Guaranteed Extra Board (GEB) at Gibson Terminal. Because there was no other GEB position available to her through the exercise of her seniority, she was placed on the non-Guaranteed Extra Board.

The displacement occurred when a senior employee exercised her seniority to return to the clerical craft. The return resulted in a number of bumps and displacements which ultimately worked their way down to the position held by the Claimant. At the time, there were four GEB positions at Gibson Terminal protecting five regular positions. The GEB positions only filled vacancies in the Computer Room or as Crew Dispatcher. Following the Claimant's displacement, there remained four GEB positions.

In its handling of the dispute on the property, the Organization contended that the Carrier's action violated "Rules 25 and 33" of the Agreement, "as well as the Attrition Agreement at IHB Railroad." The Organization's on-property handling however, makes no attempt to describe the manner in which Rules 25 and 33 were violated. The Carrier, on the other hand, went into considerable detail describing the inapplicability of the cited Rules to this case. Inasmuch as the burden of proof in rules

cases rests upon the moving party, and that burden has not been met, the Board must conclude that the cited Rules lend no support to the Organization's position.

With respect to the existence of an Attrition Agreement between the Organization and the Carrier, there is on-property handling by the Organization. Thus, in its claim letter dated September 1, 2010, the Organization stated:

"It is the position of the Employees that the Carrier violated the intent of the Attrition Agreement which there was no longer to be layoffs or furloughs on the Indiana Harbor Belt Railroad property. That the intention of the Agreement was that the Carrier would make every effort not to allow their employees to be laid off.

The Carrier has an Attrition Agreement with the Organization that no employees would be furloughed. Those positions would be abolished if possible, when the employees holding these positions would retire from service. Then the Carrier would redistribute the work on that position to the other clerks and abolish the job. Evidently, there is some sort of Agreement between the Carrier and the Organization whether it was verbal or written."

In its letter of response, dated June 2, 2010, the Carrier stated:

"The Organization alleges that Carrier violated an Attrition Agreement when it furloughed Claimant. There is no such agreement in place. There is no written and signed agreement by both Carrier's designated labor relations officer and the Union's designated representative stating no clerk would be furloughed. As I stated in our conference the Carrier does not have an Attrition Agreement with any of the 15 (fifteen) unions on its property."

The Organization asserted that there was "some sort of Agreement" between the parties whether it was "verbal or written." In the face of the Carrier's denial, however, the Organization had the burden of proof to establish the existence of an Agreement. It offered no evidence to support its assertion. Accordingly, the Board can find no basis upon which to uphold this portion of the claim and it must be denied.

The claim further contends that the Carrier also violated the Claimant's rights by not reimbursing the Claimant:

“ . . . for any out-of-pocket medical, dental or surgical expenses to the extent that such payment would have been payable by the current insurance provided by the Carrier under the terms of the governing agreement.”

The on-property correspondence of both parties does not offer any clarification of this issue. In the absence of any explication, the Board can only assume that the Organization's position was predicated upon its contention that the Claimant did not receive the benefits attendant to an incumbent of the GEB. Inasmuch as the Board is denying that portion of the claim, we will deny this portion as well.

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 21st day of December 2011.