Award No. 6088

Docket No. CL-6101

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

WESTERN WEIGHING AND INSPECTION BUREAU

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Bureau violated rules of the Agreement, effective September 1, 1949, when, on March 9, 1950, Management arbitrarily required N. D. Stephens to suspend work on a regular assignment of Joint Demurrage Clerk, Position No. 118, rate $13.26 per day, and assume normal duties attached to Position of Joint Demurrage Clerk, Position 39 in the District of Salt Lake City, Utah.

(b) The Bureau be required by an appropriate order from your Board to return Mr. Stephens to the position he properly attained in the exercise of his seniority rights, i.e. Position No. 118, Joint Demurrage Clerk, and that he be reimbursed for loss sustained amounting to $39.00 per month, representing the difference between $57.00 per month allowed occupant of Position No. 118 and $18.00 per month allowed occupant of Position No. 39 by Management for automobile operation in the performance of duties assigned to those positions, retroactive to March 9, 1950, and to continue thenceforth until proper assignment is made by returning Claimant to his regular assignment on Position No. 118.

EMPLOYES' STATEMENT OF FACTS: (a) District Manager Porter, Salt Lake City, Utah, on February 24, 1950, issued Bulletin No. 410 to the effect that Position No. 8, Supervisor of Weights at Salt Lake City would be abolished with close of business February 28, 1950. Employes' Exhibit No. 1.

The foregoing affected the following employes:

G. W. Williams, occupant of Position No. 8, Supervisor of Weights, rate $15.22, seniority date January 7, 1918, displaced.

N. D. Stephens, seniority date June 16, 1942, on Position No. 39, Joint Demurrage Clerk, rate $13.26 per day.

Mr. Stephens occupied Position 39 his mileage as the incumbent on that assignment was 296 miles per month, while the incumbent on Position 118 averaged 953 miles per month; therefore, inasmuch as our automobile allowances are based on mileage driven for an assignment, the automobile allowance is a part of that assignment, and is not renumeration or compensation extended to an employe but is merely established in order to defray the operational expenses required of an employe when his automobile is used in the services of this Bureau on the assignment the employe occupies.

There is also one other important phase of this claim that should be brought to the attention of your Honorable Board and that is we do not have an agreement of any kind with the Employes regarding automobile allowances. In other words, when we establish an allowance for a certain position it is not by agreement with the Organization because no such agreement exists, consequently, as the basis for this claim deals exclusively with the difference between automobile allowances there can be no violation of any rule because no such rule is in effect on this properly and in the light of this we respectfully request that your Honorable Board in its deliberations of this case will find that the claim is without merit and we therefore request that it be declined.

All data contained herein has been presented to the Employes.

(Exhibits not reproduced).

OPINION OF BOARD: The applicable parts of Rule 13 read as follows:

> "When a position is discontinued and reinstated within sixty (60) days, the last regular assigned incumbent, if retaining seniority rights, will upon application be returned to the position without regard to seniority * * * *.
>
> When an employe returns to a reinstated position under this Rule, other employes who are disturbed account of this temporary reduction of force may return to their former positions in the same manner." (Emphasis supplied).

The emphasized portions of the rule clearly indicate that it permits but does not require employes to return to their former positions under the circumstances specified. Thus the carrier violated that rule when it required claimant to return to position No. 39 from Position No. 118 against his wishes and he should be restored to position No. 118.

The claim asks reimbursement for the difference in the monthly automobile allowances for the occupants of the two positions. Such allowances are not a matter of agreement. More important however is the fact that claimant in notifying his supervisor of his desire to remain on position No. 118 stated in writing, "But I am willing to work on my old position, until definite interpretation of Rule No. 13 is determined." Under such circumstances it is inappropriate to award a penalty for the violation.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That Carrier and Employe involved in this dispute are respectively Carrier and Employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was violated.

AWARD

Claim sustained to the extent stated in the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of February, 1953.