

Award No. 18127
Docket No. TE-18596

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC

**PENN CENTRAL TRANSPORTATION COMPANY
(New York and Northeastern Regions, except Springfield Division)**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Penn Central Company, T-C 5705, that:

CLAIM NO. 1

Carrier File: 20-9-15 (TE68.39)

Committee File: 11-102-79

1. Carrier violated Article 27(a) of T.C.E.U. Agreement when, on April 29, 1968, it failed to place successful applicant for position of Telephoner-Clerk, Dresden, N. Y. — 9:00 P. M. to 5:00 A. M. trick on assignment within ten (10) days after close of bidding for assignment.

2. Carrier shall compensate R. S. Beaty for each day, 8 hours at \$3.0466 per hour, while held off his assigned position. The dates being May 15 to May 21, inclusive, 1968, May 24 to May 31, inclusive, 1968 and June 1 to June 7, inclusive, 1968. This being 22 days.

CLAIM NO. 2

Carrier File: 20-9-123-S (TE68.31)

Committee File: 11-102-75

1. Carrier violated Article 27(a) of T.C.E.U. Agreement when, on April 29, 1968, it failed to place successful applicant for position of Telephoner-Clerk, Dresden, N. Y. — 9:00 P. M. to 5:00 A. M. trick on assignment within ten (10) days after close of bidding for assignment.

2. Carrier shall compensate R. S. Beaty for each day, 8 hours at \$3.0466 per hour, while held off his assigned position. The dates being April 29 and 30, 1968 and May 1 to May 14, inclusive, 1968. This being 16 days.

The claims were subsequently progressed on the property in the usual manner up to and including the Assistant General Manager, Employee Relations (now Superintendent-Labor Relations and Personnel) who is the highest officer of the Carrier designated to handle such disputes on the Region. Claim No. 1, quoted above, was denied in a letter dated November 15, 1968, and Claim No. 2, also quoted above, was denied in a letter dated October 1, 1968.

OPINION OF BOARD: In these two claims, the Organization charges the Carrier with violation of the Agreement for not timely placing an employee on a position for which he had been the successful bidder. Both parties, in arguments to this Board, agree that there was such a violation, but contest whether or not the section of each claim concerning compensation should be allowed.

We find that the Claimant, during the period cited, was filling an assignment with the actual earnings higher than they would have been had he been on his regular assignment, thus sustaining no loss in pay or work opportunity.

Petitioner mentions Award No. 28 of Special Board of Adjustment No. 421 in its presentation as parallel to the case at hand, as does the Carrier.

That Award says, in part:

"... In view of the fact that Claimant increased his earnings by virtue of being diverted to the vacancy at Int. 26, and since there is no showing that any other employee was improperly deprived of work or pay, we conclude that Part 2 of the claim should be denied."

Following that Award, we sustain Paragraphs 1 of Claims 1 and 2, and deny Paragraphs 2.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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

That the Agreement was violated.

AWARD

Paragraphs 1 of Claims 1 and 2 sustained; Paragraphs 2 of Claims 1 and 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1970.

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