

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19973
Docket Number CL-19974

C. Robert Roadley, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(The Western Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7150)
that:

1. Carrier violated the Agreement when it required Miss J. D. Everson and Mr. J. S. Dennis to break-in on positions without compensation after having accepted their displacements to said positions.

2. Miss J. D. Everson shall be allowed eight hours pay for each date of March 23 and 24, 1971 at Steno-Clerk rate and Mr. J. S. Dennis be allowed eight hours pay for each date February 18, 19, 20 and 22, 1971, at the rate of Yard Checker, South Sacramento.

OPINION OF BOARD: The claim herein involved covers two claimants, one a Steno-Clerk and the other a Yard Clerk. However, the factual situation in both instances are identical so that the two disputes were combined and handled as such by the parties. Each employee exercised their displacement rights by declaring their intention to displace a junior employee on each of the positions referred to above. In neither instance were the claimants qualified to displace on the position of choice and they were each therefore notified by Carrier that it would be necessary for them to qualify themselves before their displacements could be accepted. The subject claim is for compensation for the days each claimant required to so qualify.

Prior to considering the merits of the combined claim it is necessary that we make a determination as to Carrier allegation that the claim is procedurally defective because the claim appealed to the Carrier's highest officer on the property is not the same claim as referred to this Division.

A review of the record of the handling on the property shows that the claim was progressed on the grounds that past practice on this property was of sufficient degree to warrant payment to claimants while breaking-in. Additionally, in his letter of appeal to the Carrier's highest officer designated to receive such appeal, the General Chairman stated, "It is our hope that the Carrier will reconsider this claim in the light of fairness and equity....." The General Chairman also stated in his submission to this Board, "....it is true that there is no rule which requires the Carrier to compensate an employee for breaking-in,....."

It is noted, however, that part 1 of the claim as submitted to this Division states as follows:

"Carrier violated the Agreement when it required Miss J. D. Everson and Mr. J. S. Dennis to break-in on positions without compensation after having accepted their displacements to said positions."

In its rebuttal to Petitioner's Ex Parte submission the Carrier stated:

"For the first time in the handling of the instant dispute, the Organization has contended Carrier violated the Agreement. Even at this point in the handling of the instant dispute, Carrier is uninformed as to the Agreement rule allegedly violated.

Secondly, for the first time in the handling of the instant dispute, the Organization is contending that Carrier failed to compensate Claimants after having accepted their displacements to said positions. At no time in the handling of the instant dispute on the property did the Organization ever take the position or contend that Carrier accepted Claimants' displacements prior to being qualified for the positions of their choice."

Neither of the foregoing Carrier statements were challenged by Petitioner, no Organization rebuttal having been submitted.

After a thorough review of the record, it is readily apparent that the claim as submitted to the Board substantially differs from the claim as handled on the property; the difference is not a minimal deviation. Therefore, we will sustain the objection of the Carrier based upon this variance and dismiss the claim.

See Awards 19218, 19330, 19425 and many others on this rationale.

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;

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

That the claim be dismissed for reason stated in the Opinion.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1973.