

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22127
Docket Number MS-21984

Herbert L. Marx, Jr., Referee

(Dwayne A. Ehresman, N. T. Weber,
(Spencer A. Peterson
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company
((Eastern District)

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of our intention to file an ex parte submission on December 15, 1976 covering an unadjusted dispute between us and the Union Pacific Railroad involving the question;

Our claim of violation by the Union Pacific Railroad of Section 3 Article VIII of the Mediation Agreement dated Feb 25, 1971 which states in part, quote, "Such new positions shall be assigned on the basis of seniority, fitness and ability, (fitness and ability being sufficient seniority shall prevail) to the employees affected by the combining of said work and/or functions and on the basis of their combined roster seniority." unquote. Also our claim of violation of a doctrine established by history, tradition, custom, and past practice that an employee is not assigned to a position until they have physically taken over the duties of the assignment. Awards by the Third Division supporting this doctrine are 13810 2209 2389 and 13459.

OPINION OF BOARD: In accordance with the provisions of Article VIII of Mediation Agreement, Case No. A-8853, dated February 25, 1971, the Carrier and the Brotherhood through negotiated implementing agreements consolidated the Clerk and Telegrapher Rules Agreements and seniority rosters on this property effective June 1, 1975.

Subsequently, on or about August 1, 1975, Carrier effected the consolidation of certain clerk and telegrapher positions in accordance with the provisions of the aforementioned implementing Agreement. Claimants were affected by this consolidation of positions, and the claim as outlined in the Statement of Claim of this docket ensued.

In this case, petitioners argue that the May 22, 1975 implementing Agreement as negotiated on the property is in contravention of their interpretation of certain provisions of the February 25, 1971 National Agreement.

From examination of the Agreements involved in this case, the Board does not view the implementing Agreement as being in contravention of Article VIII of the February 25, 1971 National Agreement. However, even if it were in contravention of the National Agreement, it is still the duly negotiated Agreement which controls the application of the existing rules on the property.

Review of the facts as they apply to the controlling Agreement lead to the conclusion that the Agreement was properly applied in this instance.

Denial of the claim is, therefore, inevitable.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1978.

