

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22199
Docket Number CL-21737

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Kentucky & Indiana Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8201) that:

1. Carrier violated the Agreement, particularly Rules 18 and 16, when on March 26, 1975 Clerk R. F. Burns was disallowed an exercise of seniority over a junior employee to claim the 11:00 P.M. to 7:00 A.M. Console Operator position.

2. Carrier shall, because of the violation cited in (1) above:

- (a) Compensate Clerk R. F. Burns for any monetary loss incurred, and
- (b) Allow Clerk R. F. Burns to exercise his seniority rights to the 11:00 P.M. to 7:00 A.M. Console Operator position.

OPINION OF BOARD: This Board has carefully reviewed the numerous arguments raised by the parties. While we recognize Carrier's strong averment that pertinent specifications of the Railway Labor Act, particularly, General Purposes, Section 2(5); Section 2, Second; and Section 3, First (i), were not fully met, we find sufficient evidence to suggest otherwise.

We will not belabor this point by an interpretive assessment of the changing argumentative distinctions made on the property, except to note that claimant satisfied the intended requirements of the aforementioned provisions. The case is properly before us on these procedural grounds.

Conversely, we are also clearly mindful of claimant's legal claim against Carrier for a purported back injury sustained in 1971 and Carrier's understandable concern to protect itself from expanded liability, but we believe that Carrier acted somewhat

precipitately, when it declined claimant's application for the 7:00 A.M. Console Operator's position.

Nevertheless, despite this observation we cannot disregard the relevance of Circular No. 1 which expresses in clear and unmistakable language the mandatory requirement that "all data submitted in support of employees' position must affirmatively show the same to have been presented to the carrier and made a part of the particular question in dispute." Petitioner's ex parte submission to the Board contained supportive documentation D-2 through D-5 which was not in fact exchanged on the property, but in substance discussed within the tactical framework of petitioner's assertions. The documents were proper.

But the inclusion therein of Employees' Exhibit D-1 which details dialogue and significant perceptions affects the heart of this case. The contents of this document were not made known to Carrier until the above submission was simultaneously received by Carrier and the Board. Unlike claimant's exhibits D-2 through D-5 which contain essentially uncontested and well-known fact situations, D-1 contains substantive data, conversational recollections and inferences which are germane to this dispute and deserving of rebuttal. It should not have been included as supportive evidence.

We recognize that the apparent equities of this dispute were not fully addressed herein, but the National Railroad Adjustment Board has set forth explicit procedures which must be judiciously observed. In the instant case, we are confident that we have applied our demanding standards, consistent with our adjudicative obligation. We will deny the claim.

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

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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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October 1978.