

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22869
Docket Number CL-22226

Dana E. Eischen, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8473)
that:

1. Carrier violated the Agreement between the parties when it failed and refused to assign clerical employee N. L. Pomeroy to position No. 732, in line with her seniority.

2. Carrier shall now be required to compensate clerical employee, N. L. Pomeroy, for an additional day's pay at the rate of position No. 732 which is \$45.33 per day, beginning March 15, 1976, and continuing on each and every day thereafter until such time as claimant is assigned to the position. The claimed amount is subject to future wage increases.

OPINION OF BOARD: The basic facts of this case are not in dispute. On March 3, 1976, Carrier issued Bulletin No. 206 advertising Position No. 732 in the Marketing Department, Seniority District No. 8. During the bulletin period no bid was received from any employee in Seniority District No. 8. Applications for the position were received, however, from Claimant N. L. Pomeroy, an employee from Seniority District No. 5, and from R. M. Owen, an employee from Seniority District No. 2. Claimant's seniority date in Seniority District No. 5 was March 24, 1971; Owen's seniority date in Seniority District No. 2 was July 12, 1974. By notice dated March 11, 1976, R. M. Owen was assigned to Position No. 732.

The Organization maintains that Carrier violated the Agreement by awarding the position in question to Mr. Owen, the junior employee. Although Rules 7, 8, 15, and 16 of the Agreement are all discussed by both parties as pertinent, the crux of the case centers on Rule 15. Rule 15 states:

"Employees filing applications for positions bulletined on other districts or rosters, shall, if they possess sufficient fitness and ability, be given preference on a seniority basis over non-employees and/or employees not covered by this agreement."

There is no dispute that both applicants were fit and qualified for the position. However, Carrier asserts that Rule 15 is of only limited import--that employees covered by the Agreement (insiders) shall be given preference over non-employees and/or employees not covered by the Agreement (outsiders); but that Rule 15 confers no right of seniority as between qualified insiders. We do not find this argument persuasive. The principle of seniority preference recognized in Rule 15 is not really meaningful unless it also implies priority as between persons of various seniority districts already holding seniority dates under the Agreement, as is the situation in this case. Accordingly, we find that Claimant should have been assigned to Position No. 732. The Claim is therefore sustained.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of May 1980.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 to AWARD NO. 22869

DOCKET NO. CL-22226

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees

NAME OF CARRIER: St. Louis-San Francisco Railway Company

Under date of May 30, 1980 the Board Sustained the two-part claim in the above case which read as follows:

"1. Carrier violated the Agreement between the parties when it failed and refused to assign clerical employee N. L. Pomeroy to position No. 732, in line with her seniority.

"2. Carrier shall now be required to compensate clerical employee, N. L. Pomeroy, for an additional day's pay at the rate of position No. 732 which is \$45.33 per day, beginning March 15, 1976, and continuing on each and every day thereafter until such time as claimant is assigned to the position. The claimed amount is subject to future wage increases."

The Board thereupon issued an order to make effective Award No. 22869 and directing Carrier to pay to the Employee the sum to which she is entitled under the Award on or before July 15, 1980.

By letter of June 17, 1980 however, Carrier's then Director of Labor Relations requested an interpretation of Award No. 22869 on the grounds that literal compliance with the Award would allegedly grant to Claimant a "wind-fall" which, Carrier opined the original claim was not intended to do. In that letter Carrier advanced for the first time on the record of this claim an assertion that Part 2 of the claim should be reduced by off-setting other earnings of Claimant and by considering her-unavailability to work due to leave of absence from May 15 - June 28, 1976. Carrier concedes that it did not raise these matters nor any other issues relative to Part 2 of the claim in handling on the property or in its submission or arguments before the Board because it was so sure that it would prevail on the merits in Part 1. Carrier urges however that we should now consider and rule in its favor on these matters, under the rubric of an "Interpretation", so that justice and equity may be satisfied. Carrier also prays that we will in that Interpretation reach and reject a claim for ten (10) percent interest upon her damages under Award 22869 which Claimant has filed on the

property. The Organization maintains that both of Carrier overtures should be rejected; the prayer to reduce damages for belatedness and the prayer to deny interest for prematurity.

Carrier's motion that we consider and deny Claimant's separate and independent claim for interest clearly must be rejected by this Board. That matter has been handled as a separate claim on the property and moreover has not yet been handled to a conclusion on the property and appealed to arbitration. We simply have no jurisdiction to entertain the matter at all, let alone in the guise of an interpretation of another claim.

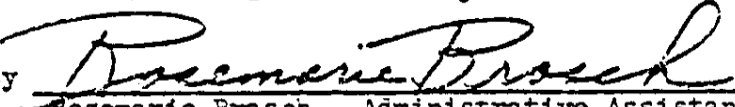
With respect to the request for an interpretation respecting damage payable under Part 2, we can well understand Carrier's desire to present the question of offsets and compensatory damages. This Board and particularly this Referee has not been reluctant to credit such arguments when they have been raised and joined in timely fashion on the record. Despite ample opportunity in handling on the property and before the Board, however, these questions were never raised until after the Award was finalized. As has so often been held, the purpose of an Interpretation is to seek and receive clarification of ambiguities or uncertainties in the Award but not to entertain new or overlooked arguments and allow a second bite at the apple. See Interpretation No. 1 in Awards 3-3365 (Serial No. 67); 3-5078 (Serial No. 108); 3-6689; 3-19337 (Serial No. 261); 3-19062 (Serial No. 265); 3-21372. See also Award 3-14162 (Opinion on Remand).

Careful review of our decision in Award 22869 and of Carrier's request for interpretation reveals neither the existence nor even the colourable allegation of ambiguity or lack of certainty in the damages awarded. Part 2 of the claim was sustained as presented. The parties have in effect stipulated junior employee Owen worked Position No. 732 from 3/15/76 until 4/16/79 when Claimant Pomeroy displaced on to the position. Also, it is stipulated that the compensation paid on Position No. 732 for March 15, 1976 through April 16, 1979 was \$42,194.90, (i.e. "\$45.33 per day, beginning March 15, 1976, and continuing on each and every day thereafter until such time as claimant is assigned to the position. The claimed amount is subject to future wage increases.") We find no ambiguity or lack of certainty in the Award sustaining Parts 1 and 2 of the claim. Accordingly we must reiterate Award 22869 and our Order of May 30, 1980.

Referee Dana E. Eischen, who sat with the Division as a neutral member when Award No. 22869 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of July 1982.