

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23213
Docket Number MS-22817

Richard R. Kasher, Referee

PARTIES TO DISPUTE: (Irene O'Neil
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: "I was displaced from my job as an Asst. Console Operator paying \$68.00 a day. I was told that I could bid on any job in the railroad as long as I had more seniority than the person involved. I chose to bump on a Reconsigning job paying \$57.00 a day because I had worked there before and the hours were better for my children. I was guaranteed my preserved rate at \$68.00 a day no matter what job I chose. My new supervisor Gil Boerner waited until I started on the job before he told me he would not pay me my guaranteed rate."

OPINION OF BOARD: The Claimant was displaced from her regularly assigned position, Assistant Console Operator, No. 23170, by a senior employe on November 17, 1977. The daily rate of pay for Position No. 23170 was \$68.5240. On the same day the Claimant exercised seniority to Position 03150, Tracing & Reconsigning Clerk. The daily rate of pay for Position 03150 was \$57.1848.

The instant claim arose when, after reporting to her new position on November 21, 1977, the Claimant was told that she was not entitled to a protected rate of pay and that she would receive the rate of \$57.1848 not her previous rate of \$68.5240. The Claimant contended that she was told by supervision on November 17, 1977 that she could bump onto any position, provided she had sufficient seniority, without a reduction in her protected rate.

The claim must be denied. The BRAC Protective Agreement, Article V, Sections 1(a) and 1(g) provide that, if an employe is unable, in the normal exercise of seniority rights, to obtain a position producing compensation equal to or exceeding the compensation of the regularly assigned position, then such employe is entitled to receive the difference between the rate of the former position and the rate of the position to which the employe displaced. Here, however, the Claimant could have displaced onto Position 23120, Console Operator, which carried a rate of pay of \$70.8064, \$2.2824 more per day than her former position. While it is unfortunate that the Claimant may have not understood her displacement rights, it has not been shown that her supervisor purposefully led her

astray regarding her obligations to exercise seniority to the higher rated position. Claimant alone was responsible to preserve her protected rate, and the Agreement is clear and unambiguous in its description of this responsibility.

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 Employee involved in this dispute are respectively Carrier and Employee 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. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1981.