

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23854
Docket Number CL-23781

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9292) that:

(a) The Southern Pacific Transportation Company violated its Agreements with this Organization when it refused and/or failed to maintain the proper number of Guaranteed Extra Board positions required by said Agreements at Eugene, Oregon, on and subsequent to November 15, 1977; and

(b) The Southern Pacific Transportation Company shall now be required to establish and maintain the number of positions on the Guaranteed Extra Board at Eugene specified in Article VII, Agreement of September 16, 1971.

OPINION OF BOARD: The Organization contends that Carrier violated the Agreement when it failed to maintain the proper number of Guaranteed Extra Board positions at Eugene, Oregon on and subsequent to November 15, 1977. Specifically, the Employee claims that Carrier violated Article VII, Section 1(b)1. It states:

"1. The number of extra board positions at each of the locations set forth in (a) of this section shall be not less than fifteen percent (15%) of the number of permanent positions, including permanent assigned relief positions to be served from such locations; if the number of positions on Guaranteed Extra Boards at any location drops below fifteen percent (15%) and there is insufficient number of qualified unassigned employees eligible for recall to vacancies on the extra board, as provided herein, carrier will arrange to hire an appropriate number of additional employees."

At the time that this dispute arose, there were one hundred sixty-three (163) positions that were relieved by the extra board. Using the formula in the Agreement there should have been twenty-four (24) men on the extra board. Instead, there were eighteen (18) positions on the board when this claim was instituted.

Carrier does not dispute that the number of employees on the board was insufficient. However, it argues that an attempt was being made to hire new employees. Carrier also contends that the claim is moot because subsequent to the claim, in February 1978, the extra board had twenty-eight (28) employees. Since this is in excess of the required number, Carrier asserts that the claim was mooted.

We are of the view that the claim is not moot. While it is true that the circumstances complained of were ameliorated subsequently, the fact remains that the claim, as presented, is not moot simply because compliance with the Agreement took place after the grievance was filed.

The evidence is absolutely clear that Carrier violated the Agreement when it had less than 15% of the employees to be covered on the board. While we are mindful that Carrier attempted to comply with the Agreement, the fact of the matter is that it did not. There are no grounds for finding impossibility of performance. As such, the claim must be 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: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of April 1982.

