

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24297  
Docket Number CL-24607

Paul C. Carter, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks,  
{ Freight Handlers, Express and Station Employees  
{ Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9639) that:

1. Carrier violated the effective Clerks' Agreement when, on July 21, 1981, it removed Clerk Barbara Dommer from service without just cause;

2. Carrier shall now return Ms. Dommer to service and shall compensate her for all time lost commencing with July 21, 1982, and continuing until she is returned to service. Dates and amounts to be determined by a joint check of Carrier records.

OPINION OF BOARD: The dispute herein involves the same parties, the same Claimant, and basically the same issues as involved in our recent Award No. 24196. In the prior case the Carrier denied the Claimant a janitor position, which position involved the operation of Company vehicles, because she was under medical restriction, based on visual deficiency, against driving a Company vehicle. In our present dispute the Claimant was removed from the extra board at Gary, Indiana for the same reason, visual deficiency and Carrier's restriction against her operating Company vehicles.

In Award 24196 the Board found that Carrier had failed to establish reasonable justification for the disqualification of Claimant on the basis of her visual deficiency. We have carefully reviewed Award No. 24196. We find it well reasoned and not in palpable error. The Carrier has submitted some of the correspondence in the janitor position dispute as part of its submission in the present dispute; thus indicating that it considers the disputes similar.

For the reasons outlined in Award No. 24196, the claim that the Agreement was violated in our present dispute will be sustained as the Carrier's prohibition against Claimant operating Company vehicles was disposed of in that Award. This referee will not be a party to conflicting awards in disputes between the same parties, involving the same Claimant, and the same basic contentions of the parties.

As to the remedy for the violation, the Carrier states, and it has not been refuted, that because of force reduction, since November 3, 1981, Claimant has not possessed sufficient seniority to be returned to service even had she not been prohibited from operating Company vehicles. We will award that Claimant be paid the difference between what she would have earned from July 21, 1981, to November 3, 1981, had the prohibition against operating Company vehicles not been imposed, and what she may have earned from the Carrier or other employment during that period.

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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April 1983.



## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 24297

DOCKET NO. CL-24607

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

NAME OF CARRIER: Elgin, Joliet and Eastern Railway Company

Upon application of the representatives of the Employees involved in the above Award, that this Division interpret the same in light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made.

The Organization's notice to file an ex parte submission in the dispute covered by Award No. 24297 was dated June 8, 1982. Award No. 24297 was based upon the record before the Board at the time the award was made, April 14, 1983. In the concluding paragraph of Award No. 24297, the Board held:

"As to the remedy for the violation, the Carrier states, and it has not been refuted, that because of force reduction, since November 3, 1981, Claimant has not possessed sufficient seniority to be returned to service even had she not been prohibited from operating Company vehicles. We will award that Claimant be paid the difference between what she would have earned from July 21, 1981, to November 3, 1981, had the prohibition against operating Company vehicles not been imposed, and what she may have earned from the Carrier or other employment during that period."

No contention was raised in the record leading up to the award about junior employees allegedly being recalled to service about February 11, 1982. In the Organization's request for interpretation, it contends that employees junior to claimant Barbara Dommer were recalled to service and worked full time from February 11, 1982, until on or about March 10, 1982 and seeks compensation for Claimant Dommer for that period.

It is well settled that the Board may not, through the guise of an interpretation, properly consider issues that were not before the Board when the original award was issued. Any contention now made that Ms. Dommer should have been recalled to service on or about February 11, 1982, must be dismissed.

Referee Paul C. Carter, who sat with the Division as a neutral member when Award No. 24297 was adopted, also participated with the Division in making this interpretation.

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By Order of Third Division

ATTEST:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of October, 1983.

