

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25690  
Docket Number SG-25879

Hyman Cohen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Consolidated Rail Corporation

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation:

On behalf of P. J. Rozzo for compensation for days during December 1982 on which junior employees worked in the Cleveland area, plus pay for Christmas Eve Day, Christmas Day, and New Year's Day (January 1, 1983). System Docket 2067, Western Region Case 2-83-C.

OPINION OF BOARD: The Claimant is employed by the Carrier at its facility located in Cleveland, Ohio. He was furloughed from November 30, 1982 to January 2, 1983. On December 31, 1982 the Carrier assigned two (2) junior employees for temporary work in the Cleveland area. As a result, the Claimant seeks lost wages for December 21, Christmas and New Year's Day due to the alleged violation of Rule 2-A-3(a) which provides as follows:

"2-A-3. (a) When positions or vacancies not subject to advertisement and advertised positions or vacancies prior to their assignment are filled, they shall be filled by the senior available employees reduced or furloughed who have signified their desire to be so used."

In order to establish a violation of Rule 2-A-3 (a) the Organization must prove the following: 1) A position or vacancy not subject to advertisement; or an advertised position or vacancy prior to filling the assignment; 2) The Claimant is the senior available employee reduced or furloughed; and 3) He has "signified" his "desire to be so used".

Only the last requirement of Rule 2-A-3 is in dispute namely, whether the Claimant has "signified" his "desire to be so used". The Claimant responded to a call for temporary work on May 6, 1982 and between November 16 and 29, 1982. The Board has inferred that the Claimant may have been under the impression that prior use when called upon to fill a temporary position signifies a desire to be used in the future. Limiting this decision to the facts of the instant case, the Board concludes that the Claimant signified his desire to perform temporary work because of his willingness when called upon, to have filled temporary assignments on a few occasions, in the past.

However, the Board is very much aware that the Claimant did not inform the Carrier, either verbally or in writing, that he wished to be considered for the temporary assignment in question. Accordingly, by this decision, the Claimant is placed on notice, that some affirmative evidence,

other than having filled a temporary position on a few occasions, will be required in the future, to signify his desire to be used in filling a position as provided in Rule 2-A-3 (a).

The Organization has failed to prove that the Claimant qualified for holiday pay for Christmas, 1982, and New Year's Day, 1983. Accordingly, the Claimant is entitled to receive lost wages for December 21, 1982.

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:

  
Nancy J. Nevers - Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1985.

