

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26563
Docket Number CL-26437

Peter R. Meyers, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9995) that:

(a) Carrier violated the rules of the current Clerks' Agreement at Oklahoma City, Oklahoma, on January 7 and 8, 1984, when it failed and/or refused to call D. O. Hicks to protect short vacancy of Relief Clerk on Position No. OX-3, and

(b) D. O. Hicks shall now be compensated eight (8) hours' pay at the rate of \$100.92 per day for Position No. 6299, Saturday, January 7, 1984, and eight hours' pay at the rate of \$100.92 per day for Position No. 6169, Sunday, January 8, 1984, in addition to any other compensation she may have received for these days."

OPINION OF BOARD: Claimant is in an off-in-force reduction status and has no regular assignment; Claimant is available to protect short vacancies at Oklahoma City. On January 7 and 8, 1984, a short vacancy existed in a relief clerk position; Carrier filled the vacancy with regularly assigned employes at the overtime rate. The Organization thereafter filed a Claim on Claimant's behalf, challenging Carrier's failure to assign the work to Claimant.

This Board has reviewed the evidence in this case, and we find that it is fundamental that the Carrier has the exclusive right to make determinations of the duties of and requirements for a particular position and the fitness and ability of a particular applicant to perform those duties. However, it is also clear that those determinations have to be made on a reasonable basis.

In the case at hand, the Claimant had recently performed the duties of the job that became available; yet, the Carrier did not qualify the Claimant solely because the Claimant had not worked the job within the past six months. However, the record does not contain sufficient evidence that the job had changed so substantially since the Claimant had last performed it as to render the Claimant unqualified. Moreover, the Board finds that a blanket six-month rule is unreasonable and arbitrary in that many jobs do not change substantially over that period. Hence, if the Carrier wanted to deny the Claimant the job, the Carrier had the burden to show that this particular job had changed so substantially in that short period of time that the Claimant was now unqualified to perform it. Since this was not done, the Claimant should have been assigned the work. Consequently, 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 Employes involved in this dispute are respectively Carrier and Employes 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

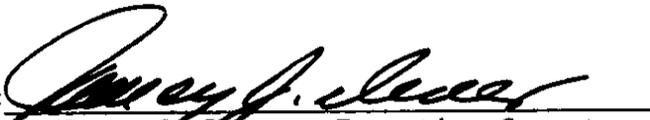
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.