

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 27997  
Docket No. MW-26475  
89-3-85-3-207

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(National Railroad Passenger Corporation - Amtrak  
(Northeast Corridor)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to permit Mr. J. Warner to displace junior Camp Car Attendant R. Small on October 21, 1983 System File NEC-BMWE-SD-798).

(2) As a consequence of the aforesaid violation, Mr. J. Warner shall be compensated for all wage loss suffered from January 1 through 24, 1984."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On October 21, 1983, Claimant attempted to displace a junior Camp Car Attendant, but the supervisor refused to allow the displacement. Claimant filed a timely grievance protesting this action and mitigated his claimed damages by displacing onto the only other available position, a lower-rated Trackman. He worked continuously as a Trackman until filing furlough papers on December 31, 1983.

By letter of January 16, 1984, Carrier sustained the original claim and compensated Claimant for differential straight time earnings for the period October 21 through December 30, 1983. Carrier also directed Claimant at that time to report for physical examination and restoration to position as Camp Car Attendant, not later than January 26, 1984. Claimant reported for the examination on January 24, and returned to service as Camp Car Attendant on January 25, 1984.

The present claim is for alleged damages during the period January 1 through January 24, 1984, following his furlough as Trackman and prior to his restoration to service as Camp Car Attendant.

There can be no reasonable debate that but for the violation of his seniority rights in October 1983, Claimant would not have been working as a Trackman on December 30, 1983, but rather would have been working continuously as a Camp Car Attendant. Carrier asserts, however, that Claimant was not compelled to furlough on December 31, 1983, but rather voluntarily did so. Throughout handling Carrier insisted there were other employees junior to Claimant working on the Baltimore Division from January 1, 1984, whom he could have displaced. These assertions that Claimant was not "forced to furlough" but rather chose "lay-off" were not effectively refuted on the property and are supported by documentary evidence supplied by Carrier.

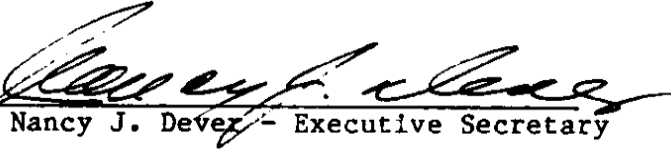
The facts of record support a conclusion that but for Carrier's violation in October, 1983, Claimant would have been working as a Camp Car Attendant during the period January 1-24, 1984. On the other hand, the record evidence also supports a conclusion that Claimant could have held a different lower-rated position during that period of time. Accordingly, his recovery for the period January 1-24, 1984, is limited to the difference between the earnings of the Camp Car Attendant position he should have held and the earnings of the highest of the lower-rated positions he could have held during that period in the exercise of his seniority.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1989.