Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28171
Docket No. CL-27883
89-3-87-3-413

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10173) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Amarillo, Texas when it failed and/or refused to properly compensate Claimant A. D. Smith at the rate of 100% of the full rate for service work and/or intermodal service assignments commencing April 15, 1986, and

(b) Claimant A. D. Smith shall now be compensated for the aforementioned assignments at the rate of 100% of the full rate, less amounts received for these days on these assignments, commencing April 15, 1986, and continuing until such claim is settled."

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.

The Organization filed this Claim alleging the Claimant was not properly compensated for assignments between April 15 and May 20, 1986, while filling short vacancies from an "off-in-force-reduction" status. Essentially, the Organization charges the Carrier improperly invoked the provisions of Article VII, Section 2 of the National Agreement dated April 15, 1986, when it paid the Claimant at the rate of 75 per cent of the full rate of the assignment worked instead of 100 per cent. Article VII, Section 2, states:

"(a) For positions described in Section 1 above, the full rate of pay for employees who establish seniority after the date of this Agreement shall be 75% of the rate in effect as of 'November 30, 1985 and shall be subject to Article III, Rate Progression.

(b) If such a position is filled by an employee with less than 6 years of service and who has been furloughed for more than one year as of the date of this Agreement, other than an employee subject to a protective agreement or arrangement, such employee shall be compensated at the rate of 75% of the full rate of the position as of November 30, 1985 and, where applicable, shall also be subject to Article XI, Rate Progression, of the Agreement of December 11, 1981 or local rules governing entry rates.

(c) A non-protected employee, recalled to fill a specific intermodal or service worker position at 75% of the full rate, may decline recall until recalled for any other position or extra list. A protected employee must respond to recall in accordance with existing rules or agreement.'"

In replying to the initial Claim, the Carrier pointed out the Claimant was furloughed on February 16, 1982, and has "not held title to any position since that date." The Carrier then asserted that since the Claimant had less than six years of service and has been furloughed for more than a year, she was properly compensated at the 75 per cent rate.

The Organization's appeal indicated the intent of the parties to the above cited 1986 National Agreement did not intend Article VII, Section 2(b) to affect furloughed employees who have performed extra work in the 365 days prior to April 15, 1986. Furthermore, the Organization claimed that off-in-force reduction employees are "extra" employees and are distinguished from "furloughed" employees.

The Carrier, in responding to the Organization's appeal, indicated the Organization had not given a clear definition of which employees it considered "furloughed" and which employees it considered "off-in-force reduction." The Board, too, fails to find that distinction defined by the Organization. If the Organization were to prevail on that issue, clearly "furloughed" employees would be barred by the provisions of Rule 14-B from filing a written notice of their availability to fill short vacancies and vacation relief.

The Organization insists the parties' Agreement does not utilize the term "furloughed" except in Rules 32-B and C. Accordingly, the Organization argues Article VII, Section 2 was improperly invoked because the Claimant is not a furloughed employee. To reach this conclusion, the Organization maintains the Claimant is an "extra employee." The Organization also contends that since it is acknowledged by a Kilroy/Hopkins side letter that one day of work serves to break the continuity of 365 consecutive days of furloughed status relating to seniority, it would not be unreasonable to conclude one day of work breaks a furloughed status in this dispute.

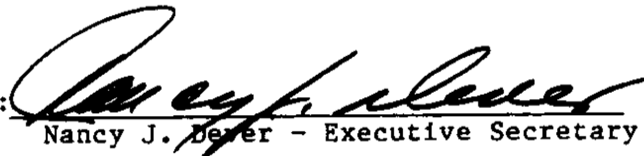
This latter argument is inherently contradictory. The April 15, 1986, side letter cited by the Organization refers exclusively to termination of seniority. In clarifying the application of Article VIII of the National Agreement, the Kilroy/Hopkins letter clearly indicates that despite performing extra work, a furloughed employee is "formally considered as continuing in his furloughed status even while performing such work."

The Organization's arguments are ingenious, but, nevertheless, fail to meet the burden of establishing that the Agreement provides that off-in-force-reduction employees are "extra" employees and, as such, are distinguished from "furloughed" employees. On this basis, the Board is forced to conclude there is no probative proof such a distinction exists.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1989.