

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Western Railroad Association

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10278) that:

1. The Western Railroad Association violated Rules 5 and 9, among others, when it recalled Michael Consolazio to fill the vacancy created by F. Walsh sick leave, beginning September 8, 1987, without bulletining.

2. The Association shall now be required to bulletin the vacancy created by Mr. Walsh and compensate R. Parker and any other adversely affected employee an amount equal to what they could have earned, including but not limited to daily wages, overtime and holiday pay, beginning September 8, 1987 and continuing until this dispute is settled. This shall be in addition to any other compensation received during the same time period."

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.

This dispute arose because one of the Association positions was not filled while the incumbent was sick and receiving benefits under the provisions of Rule 32.

The basic issue is whether Rule 5, Bulletined Position, or Rule 32 (1), Sick Leave is controlling with respect to the filling of the position while the incumbent was off sick.


After careful review of the respective position of the parties, we find the Association's position persuasive and that Rule 32(i) governs situations like this. As we construe Rule 32(i) in the context of the relevant facts of this case, the Association had the option to fill, partially fill or blank the position at issue. It did not have to bulletin the vacancy created by the incumbent being off sick. Pursuant to that Rule, it may recall, as it did, the senior furloughed employee.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1990.