

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29526
Docket No. CL-29578
93-3-90-3-558

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10519) that:

- (a) Carrier violated the intent and provisions of the current Clerks' Agreement at San Bernardino, California beginning on August 16, 1989, when it diverted Claimant H. L. Coffey from his regular assignment on Relief Clerk Position No. 9420 at San Bernardino and required him to protect PADO Transportation Service Coordinator, Position No. 3001, without proper compensation, and
- (b) Claimant H. L. Coffey shall now be compensated an additional eight (8) hours' pay at the pro rata rate of Transportation Service Specialist for every Monday, Tuesday, and Wednesday, August 16, through August 30, 1989, in accordance with Rule 32-N and the Letter of Understanding between the parties dated December 7, 1977, in addition to any violation of Agreement Rules, and
- (c) Claimant Coffey shall also be compensated an additional twelve (12) hours' pay at the pro rata rate of PADO Position No. 3001 for Thursday, August 17, 24, and 31, 1989 in accordance with Rule 32-N and the Letter of Understanding between the parties dated December 7, 1977 in addition to any other pay received for these dates as a result of such violation of agreement rules, and

- (d) Claimant Coffey shall also be compensated an additional four hours' pay at the pro rata rate of PADO Position No. 3001 for Friday and Saturday, August 18 and 19, 1989, and Friday And Saturday, August 25 and 26, 1989, in addition to any other pay received for these dates, which represents proper payment for service on the assigned rest days of his regularly assigned position as a result of such violation of agreement rules, and
- (e) Claimant Coffey shall also be compensated eight (8) hours' pay at the pro rata rate of Transportation Service Specialist for Sunday, August 20, 1989 and Sunday, August 27, 1989, which represents proper payment for not being allowed to protect his regular assignment on these dates as a result of being diverted from his regularly assigned position."

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.

Pursuant to a bulletin issued on August 8, 1989, the Carrier abolished Claimant's Transportation Service Specialist Position No. 6138 effective August 15, 1989. Claimant was the successful bidder on Position No. 9420, a regularly assigned relief position. The Carrier awarded Claimant Position No. 9420 effective August 16, 1989.

Concurrent with the abolition of Position No. 6138, the Carrier established a new Transportation Service Coordinator Position (No. 3001) which was exempt from the promotion, assignment, displacement and overtime rules (PADO) of the Agreement. The new PADO position assumed all of the duties previously performed by the incumbent of Position 6138 as well as several added duties. Ironically, the Carrier appointed an employee to Position No. 3001 who was not immediately qualified to execute the duties of the position. Thus, the Carrier held Claimant off Position No. 9420 so he could train the appointed employee on the duties of Position No. 3001. Claimant trained the appointed employee from August 16 to August 26, 1989. Thereafter, Claimant, alone, performed the duties of Position No. 3001 for two additional weeks while the newly appointed employee went on vacation. The Carrier compensated Claimant pursuant to Rule 11-D beginning on the seventh day after it held Claimant off Position No. 9420. Rule 11-D provides:

"An employee awarded a bulletined position will be released for such assignment as soon as qualified relief is available and in any event within seven calendar days after date of assignment bulletin. An employee not so released within seven calendar days after the date of assignment bulletin will thereafter receive the rate of the position occupied or the position to which assigned, whichever is higher, and in addition will be paid one hour's pay, at the higher pro rata rate, each work day of the position occupied until released."

The issue in this case is whether the Carrier refrained from releasing Claimant to occupy Position No. 9420 or whether the Carrier diverted Claimant from his bulletined assignment (Position No. 9420). If Claimant had not been released to fill the position he was awarded by seniority bid, then Claimant was properly compensated under Rule 11-D. However, if, as the Organization alleges, Claimant was the occupant of Position No. 9420 and the Carrier diverted him from his assignment, Claimant was entitled to compensation as provided by Rule 32-N and the December 7, 1977 Letter of Understanding interpreting Rule 32-N.

Under the peculiar facts of this case, we find that, for the period from August 16 to September 8, 1989, Claimant continued to occupy a position virtually identical to the position he held before the August 15, 1989, abolishment. Stated differently, the Carrier failed to release Claimant to fill the position awarded him by bulletin, so Claimant could train the occupant of the position which was the successor job to Claimant's abolished position. It

is undisputed that the duties of Position No. 3001 were substantially equivalent to the duties of abolished Position No. 6138. Moreover, there is some question regarding whether or not the Carrier can divert Claimant from an assignment which he had not yet filled. Claimant, although awarded Position No. 9420, did not actually assume the duties of the assignment until after August 16, 1989. Instead, the Carrier's instruction to Claimant that he train the employee selected for Position No. 3001 was akin to keeping Claimant on his prior position and not releasing him to the bulletined position he was awarded as opposed to diverting him from his regular assignment.

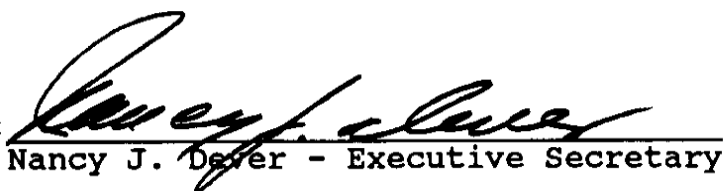
Therefore, Claimant was entitled to the payments specified in Rule 11-D. Since the Carrier compensated Claimant under Rule 11-D, we do not find any violation of the applicable Agreement.

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 3rd day of February 1993.