

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29529
Docket No. CL-29595
93-3-90-3-573

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

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-10522) that:

- A. Carrier violated the provisions of the current Clerk's Agreement at Los Angeles, California, on November 9, 1989, when it failed and/or refused to call H. M. Dix to protect the short vacancy on Transportation Service Specialist Position No. 6325, and
- B. Claimant Dix shall now be compensated eight (8) hours' pay at the time and one-half rate of Transportation Service Specialist Position No. 6325 for November 9, 1989, in addition to any other compensation Claimant may have received."

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 November 6, 1989, a senior employee displaced Claimant from Position No. 6325, a regular third shift assignment, with Wednesday and Thursday rest days, in the Los Angeles Division Station Department Seniority District. The Carrier prevented Claimant from immediately exercising her seniority rights because it instructed Claimant to train the displacing employee on the duties of Position No. 6325. The Carrier released Claimant to exercise her seniority on November 28, 1989.

On Thursday, November 9, 1989, there was a short vacancy on the position which relieved Position No. 6325 on the Incumbent's rest days. To fill the vacancy, the Carrier followed the order of precedence set forth in Rules 14-C and 14-D. However, the Organization alleges that, under these Rules, Claimant had preference to fill the short vacancy over the employee the Carrier assigned.

More specifically, the Carrier assigned an employee to fill the short vacancy pursuant to Rule 14-D(2). The Organization contends that the Carrier should have assigned Claimant to the one shift vacancy per Rule 14-D(1) which provides:

"If the vacancy is on a rest day relief position the regular occupants of the positions being relieved shall protect the rest days of their own position if they so desire."

The issue is whether or not Claimant was the "regular occupant" of Position No. 6325 on November 9, 1989.

The Organization stresses that Claimant must have been an occupant of the position because the Carrier had not yet released her to exercise her seniority to another available position. On the other hand, the Carrier submits that Rule 9-C specifies that an employee breaking into a position becomes the occupant of the position at the commencement of the break-in period. The Organization does not directly refute that the displacing employee, who was qualifying on Position 6325, is a new occupant of the position, but the Organization contends that Claimant also remained an occupant. Otherwise, the Organization argues, the Carrier could arbitrarily deny Claimant the rights accorded her by Rules 14-C and 14-D.

While the words "regular occupants" in Rule 14-D(1) is plural terminology, the language does not necessarily mean that the drafters of the rule intended that there can be multiple occupants for one position. Rather, since the rule also refers to positions in the plural, the rule was simply written for the situation where more than one relief position is relieving more than one regular job. Thus, because more than one regular position is being relieved on the particular rest day, there is more than one regular occupant. Since Rule 14-D(1) cannot be reasonably construed to permit multiple regular occupants for a single position, the Board must look to Rule 9-C. Under Rule 9-C, an employee qualifying on a position becomes the occupant of the position at the beginning of his break-in period. In this case, the senior employee who displaced Claimant commenced his break-in period on November 6 and thus the displacing employee became the occupant of the position on that date. There is nothing in the Rule 9-C suggesting that there can be dual occupants of the position during the training period. Indeed, if we were to adopt the Organization's interpretation of Rule 14-D(1), the Carrier would be faced with an irreconcilable dilemma if both occupants simultaneously asserted their Rule 14-D(1) rights.

Finally, contrary to the Organization's assertion, our interpretation of the Rule does not impair Claimant's seniority rights. Claimant could have filed the appropriate written notices under Rule 14-C(2) and Rule 14-D(2). If she had filed a Rule 14-C(2) notice, Claimant would probably have had paramount rights, over the clerk called by the Carrier, to the short vacancy.

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.