

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30276
Docket No. CL-30913
94-3-92-3-784

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

(Transportation Communications International
(Union
PARTIES TO DISPUTE: (National Railroad Passenger Corporation
((AMTRAK)

STATEMENT OF CLAIM: "Claim of the System Committee of the TCU
(GL-10876) that:

Amtrak File No. NEC-TCU-SD-912

(a) The Carrier violated the Agreement effective September 1, 1976, particularly Rules 2-A-1,3-C-1,5-D-1, and others, also Appendix E Extra List Agreement effective March 1, 1977, when on the dates of Monday, February 29, 1988 and Tuesday, March 1, 1988, C. Harris, BBC-5 Baggage Cleaner, was worked as the second trick Station Master and his position with hours of 3:15 p.m. to 11:45 p.m. was blanked.

(b) Claimant D. Payne was on relief day on both of the claim days and was available, qualified and was not called in to fill this position on either day.

(c) Claimant D. Payne now be allowed eight hours time and one-half for each date for not being called in to work this position. A total of sixteen hours time and one-half for this violation.

(d) Claim filed in accordance with Rule 7-B-1 of current agreement and should be paid."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Our review of this record shows that it raises the same issues presented to Special Board of Adjustment No. 1033 (between these same parties) in Case 18.

In the above cited case, this Neutral Member of the Board considered, at length, Award 22 of Public Law Board No. 2945 (which had been raised by the Carrier in Case 18, Special Board of Adjustment No. 1033) as a defense to its actions. The Neutral Referee has once again reviewed that Award, but has concluded that the rationale outlined in Case 18, Special Board of Adjustment No. 1033 is controlling, and indeed, is not in conflict with Award 22 of Public Law Board No. 2945.

For the reasons stated in Award 18 of Special Board of Adjustment No. 1033, the claim is sustained in this case, but for the same reasons as noted in the cited SBA Award, the claim shall be paid at the straight time rate.

AWARD

The Claim is sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of July 1994.

CARRIER MEMBERS' DISSENT
TO
AWARD 30276, DOCKET CL-30913
(Referee Sickles)

We dissent to the finding that subject dispute "raises the same issues presented to Special Board of Adjustment No. 1033 (between these same parties) in Case 18." The fact is Case 18 pertained to an explicit and limited situation, namely a vacancy created by an employee on a hold-down. In that case, the Board required payment under Appendix E, Rule 8(b) because the Rule stated:

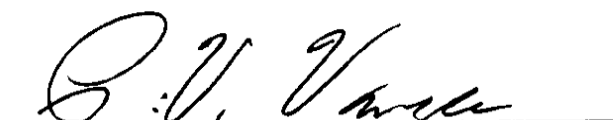
"Vacancies created by the regular employee taking a hold-down will not be subject to further hold-downs and will be filled under the provisions of Article 4,5,6 and 7 of this Agreement." (Emphasis added)

In the subject dispute, however, the vacancy was created by an employee assuming a job under a different Agreement, i.e., the Yardmasters Agreement. There is no language in the Agreement requiring the Carrier to fill such vacancies. Indeed, when the Organization suggested the parties submit this dispute to Special Board of Adjustment No. 1033 on the premise that it dealt with the same issue, the Carrier wrote the General Chairman, pointing out it was actually a different kind of case. The parties' acknowledgement of this was mentioned in that correspondence, which was exchanged on the property.

The finding in Award 30276 is therefore erroneous. Since no explanation for the decision has been offered other than the incorrect belief that the case was identical to Case 18, we consider the Board's decision as non-binding in future claims on this issue, and support the Carrier's right to blank positions.


Michael C. Lesnik


Martin W. Fingerhut


Paul V. Varga