

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30692  
Docket No. CL-30723  
95-3-92-3-655

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International  
( Union  
(  
(Green Bay and Western Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood  
(GL-10857) that:

- (1) Carrier violated the effective agreement when it failed to bulletin and award a vacancy on Position No. 75, Utility Operator-Clerk which existed in excess of thirty (30) days;
- (2) Carrier shall now compensate Ms. Karen Klarkowski at the time and one-half monthly rate of Position No. 75 for the months of March and April 1988, and time and one-half at the daily rate for each and every day thereafter up to and including May 23, 1988."

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.

During the period of this claim, Claimant was assigned as the second shift Operator at Wisconsin Rapids, Wisconsin. On that position, Claimant was subject to the Federal Hours of Service limitations. The position which is in dispute in this case was that of a Utility Operator-Clerk also located at Wisconsin Rapids. Claimant's position had a rate of pay which was greater than the rate of the Utility Operator-Clerk position. The incumbent of the Utility Operator-Clerk position was junior in seniority to Claimant. During the period of the claim, Claimant was fully employed on the higher-rated, hours of service position.

The fact situation which existed in this dispute indicates that the incumbent of the Utility Operator-Clerk position was awarded that position on September 3, 1987. The Utility Operator-Clerk position was subsequently abolished effective May 24, 1988. The claim as presented by the Organization alleged that because the incumbent of the Utility Operator-Clerk position was off duty due to personal illness for a period of time prior to the abolishment of the position on May 24, 1988, the position should have been bulletined as a "Short Vacancy" and, because this was not done, Claimant was somehow aggrieved.

From the Board's review of the fact situation and pertinent agreement rules involved in this case, the Board is convinced that no harm was done to either the Claimant or the rules agreement. Claimant was fully employed during the entire period of the claim on a position with a higher rate of pay than that which applied to the abolished position. The entire situation surrounding the claim is not only unfounded, but also is now moot. The claim as presented is, therefore, denied.

Inasmuch as the claim has been disposed of for lack of merit, there is no need to address the procedural issues raised by the Carrier.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.