

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30800
Docket No. CL-30460
95-3-92-3-259

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications
(International Union
(
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10690) that:

- (a) The Carrier (CSX) violated Rules 12, 24, 24(b), 37 and others of the Clerks' General Agreement, including Addendum 17, when incumbent Reimer was rearranged to Head Record Tracing and Adjustment Clerk, Position #080N-629 on April 9, 16 and 27, 1990, resulting in his Position (080N-620) being blanked.
- (b) The Carrier will now pay Claimant Robert E. Reimer, ID 2614336, three (3) days pay at the daily rate of \$114.23 for the days Position #080N-620, was blanked, in addition to all other earnings allowed."

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.

The basic facts of this case are not in dispute. In April 1990, Claimant was employed as a Record Tracing and Adjustment Clerk, Position 080N-620, in the Carrier's offices in Baltimore, Maryland. On April 9, 16 and 27, 1990, there was a vacancy in the position of Head Record Tracing and Adjustment Clerk, Position 080N-629, in the Carrier's offices in Baltimore, Maryland. The Head Record Tracing and Adjustment Clerk position is a "high skill" position which is paid at a higher rate than the Record Tracing and Adjustment Clerk position regularly held by the Claimant.

On the days of the vacancy in April 1990, there was no qualified employee on the extra board to fill the Head Record Tracing and Adjustment Clerk position. Pursuant to Rule 24, as modified by Addendum No. 17 of the parties' Agreement, the Claimant was "rearranged" by the Carrier to the higher skilled vacant position on the days in question. In other words, the Carrier required the Claimant to cease performing the duties of his regularly assigned position, and to perform the duties of the higher skilled vacant position. The Carrier paid the Claimant the higher rate paid for work in the higher skilled position. However, he was paid nothing for the position he vacated in order to assume the responsibilities of the higher rated position.

On the dates in April when the Claimant was rearranged to the higher skilled position, no qualified extra board employees were available to fill the Claimant's regularly assigned position. Therefore, the Claimant's regular position was blanked on the days in question. No one performed Claimant's work on those days and no one was paid for filling the position.

By letter dated May 2, 1990, the Organization filed a claim alleging that the Claimant was entitled to three additional days' pay because his regular assignment was left unfilled on the days he was rearranged to the higher skilled position. The claim was denied by the Carrier. Thereafter, the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization maintains that Rule 42 of the parties' Agreement required the Carrier to fill the Claimant's regular position on the days in April 1990, when he was rearranged to a higher rated position. It acknowledges that pursuant to Rule 42, the Carrier is relieved of this obligation if another qualified employee is not available to cover the Claimant's regular assignment. The Organization does not contend that another qualified employee was available to fill the Claimant's position on the dates in question. However, it does claim that no qualified employees were available because on November 3, 1989, the Carrier unilaterally abolished 30 extra board positions in its Baltimore, Maryland offices, in violation of the Agreement's minimum manning requirements. The

Organization insists that if the Carrier had not violated the Agreement in this manner, a qualified employee would have been available to fill the Claimant's position on the dates in question. It argues that the Carrier should not be allowed to benefit from its prior violation of the Agreement. The Organization insists that the Carrier can be prevented from profiting from its earlier violation of the Agreement, only by awarding the Claimant his regular pay for the days that his regular position went unfilled.

Accordingly, the Organization requests that its claim be sustained in its entirety.

The Carrier, on the other hand, maintains that it has not violated any provision of the parties' Agreement. It contends that it had an obligation to fill the Claimant's regular position on the dates in question, only if a qualified employee was available to fill that position. The Carrier notes that it is undisputed that no qualified employee was available to fill Claimant's position on the days he was rearranged to a higher rated position. Therefore, it insists that it did not violate the Agreement by failing to fill Claimant's position on the dates in question.

The Carrier presented evidence that the Organization filed a separate claim concerning the Carrier's decision to abolish over 30 extra board positions on November 3, 1989. It contends that the issue before this Board is not whether the size of the extra board in Baltimore, Maryland, was correct. Thus, the Carrier argues that the Organization's allegations concerning the extra board are irrelevant to this dispute.

The Carrier further maintains that the Organization's claim is procedurally defective. It contends that if anyone is entitled to be paid for the days that Claimant's position went unfilled, it is the employee who should have filled the position, not Claimant, who filled and was paid for filling a higher rated position. Thus, the Carrier claims that the Organization is seeking a remedy for the wrong person. On this basis alone, it argues that the Organization's claim should be denied.

Accordingly, and for the foregoing reasons, the Carrier asks that the Organization's claim be denied in its entirety.

After careful review of the entire record, we are convinced that the Organization's claim must be denied. It is undisputed that on April 9, 16 and 27, 1990, Claimant was rearranged to a higher rated position. It also is undisputed that on each of those days, Claimant was paid the appropriate salary for that higher rated position. Thus, we find that Claimant was paid appropriately for the days in April 1990 when he was rearranged to a higher rated position.

There has been no suggestion and there is certainly no evidence that the Claimant also carried out the duties and responsibilities of his regular position on the days in April 1990, when he was rearranged to a higher rated position. Therefore, we find that there is no basis in the record for awarding Claimant his regular salary on the days in question, when he performed the duties of another position and was paid appropriately for performing those duties.

The Organization is correct when it argues that under certain circumstances the Agreement requires the Carrier to fill the position of an employee, such as the Claimant, who is rearranged to a higher rated position. However, it is undisputed that the Carrier is relieved of that obligation if no qualified employee is available to fill the vacant position and that work is not performed. The Organization concedes that no qualified employee was available to fill the Claimant's regular position on the days in question. It attempts to overcome this defect in its proof by arguing that no one was available to fill the Claimant's position because of an earlier violation of the Agreement by the Carrier. The evidence demonstrates that the Organization filed a separate claim concerning that alleged violation by the Carrier. However, that claim is not before this Board. Therefore, it may not be remedied by this Board.

The issue before this Board is whether Claimant is entitled to be paid his regular salary on three days in April when neither he nor any other employee fulfilled the duties and responsibilities of his regular position. It is fundamental that a position may be blanked when no qualified employees are available to fill it, so long as the duties of that position are not performed. Here, there is neither a suggestion nor any evidence that Claimant's regularly assigned duties were performed on April 9, 16 and 27, 1990. Thus, we find that there is no basis in the record of the dispute before this Board for sustaining the Organization's claim.

Accordingly, and for the foregoing reasons, the Organization's claim is denied in its entirety.

AWARD

Claim denied.

O R D E R

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 6th day of April 1995.