

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31092
Docket No. MS-30989
95-3-92-3-727

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

(Duane L. Foltz
PARTIES TO DISPUTE: (
(Norfolk & Western Railway Company

STATEMENT OF CLAIM:

"I am submitting the following claim and letter of protest to Roster 1350 District 52, dated January 1, 1991, posted in Cleveland, Ohio on March 19, 1991. Carrier violated and continues to violated (sic) Rules 1,3,5,8,12 and others related of the Master Agreement and in addition violated and continues to violate the January 8, 1979 Agreement as amended November 17, 1986 when Carrier allowed D. L. Howe to be awarded a vacant position in Cleveland on August 1, 1990 with his full seniority from District 48, then assigning D. L. Howe to Position 132 on March 11, 1991 allotting him his seniority of District 48.

For said violations Carrier shall:

1. Amend and correct Seniority District Roster 1350, District 52, the seniority of D. L. Howe from 10-21-53 to 8-1-90.
2. Pay D. L. Foltz one eight (8) hour day at the straight time rate for each Monday, Tuesday, Wednesday, Thursday and Friday for position 132 First trick IBM-Caller for being held off assignment from March 11, 1991 until the violations are corrected.
3. Pay D. L. Foltz one eight (8) hour day at the punitive rate for each Thursday, Friday, Saturday, Sunday and Monday for position 136 Third trick IBM-Caller for being diverted or held off regular assignment of First trick IBM-Caller position 132 and required to work Third trick IBM-Caller from March 11, 1991 until violations are corrected.
4. Assign D. L. Foltz to Position 132, First trick IBM-Caller."

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 were given due notice of hearing thereon.

In this claim, Claimant contends that Carrier violated the Agreement when it allowed Clerk Howe to be awarded a vacant position in Cleveland, Ohio, with his full seniority. Accordingly, the Claimant asks that the claim be sustained.

Carrier argues that it did not violate the Agreement. It maintains that it acted in compliance with the January 8, 1979 Agreement in transferring Clerk Howe to Seniority District No. 52 in Cleveland, Ohio. According to Carrier, this Agreement provides a mechanism to transfer surplus furloughed protected employees to any seniority district the Carrier so chooses, as long as a bona fide permanent vacancy exists for each of the employees Carrier is seeking to transfer. Carrier originally offered Howe a vacancy in Lorrain, Ohio. However, Howe subsequently learned of a vacancy that existed in Cleveland and requested Carrier to transfer him there instead of Lorrain, Ohio.

Carrier maintains that based upon an Agreement with the Organization, Howe was allowed to transfer to Cleveland as requested. It argues that their mutual interpretation of the Agreement controls.

Accordingly, and for these reasons, Carrier asks that the claim be denied.

After a review of the record evidence, we conclude that the claim must be denied. Howe was permitted to come into an open position in Cleveland in 1990. Under Section 5, Article XII, Howe was permitted to bring his seniority date onto the new roster. As this transfer was conducted with the acceptance and approval of the Organization there is no violation of the Agreement.

Accordingly, and for the foregoing reasons, the claim is denied.

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 1st day of September 1995.