

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31094
Docket No. CL-31005
95-3-92-3-876

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

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Chicago South Shore & South Bend Railroad

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10891) that:

- (a) Carrier violated the effective agreement when it removed work from fully covered positions and assigned it to a unilaterally established position partially exempt from such agreement and then assigned said position without regard to seniority;
- (b) Carrier shall now compensate Ms. Anita Mizia for the difference between the rate of her position and that of the so-called Assistant Auditor Freight Revenue for July 29, 1992, and for each and every day thereafter that a like violation occurs."

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.

In this claim, the Organization contends that Carrier violated the Agreement when it advertised the position of Assistant Auditor

Freight Revenue and awarded it to the junior of at least three applicants.

The Organization argues that the position of Assistant Auditor Freight Revenue was eliminated in 1961. It points out that all of the duties attached to that position have been assigned to other existing clerical positions in the Accounting Department. As such, the Organization insists that Carrier cannot take the unilateral action of creating this position without the Organization's concurrence.

Accordingly, the Organization asks that the claim be sustained.

Carrier argues that it did not violate the Agreement. It maintains that Rule 1(d) lists the partially excepted position of Assistant Auditor Freight Revenue. Carrier points out that when it had a need to reestablish its own work force, it sought the Organization's concurrence, although not required to do so.

The Carrier points out that the disputed position was never deleted from the parties' Agreement. It submits that the fact that the position was vacant for a considerable period of time does not waive the Carrier's right to reinstate the position.

Accordingly, 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. The position of Assistant Auditor Freight Revenue has been an exempt position in the parties' Agreement. It has never been removed. The fact that the position was unfilled for a significant period of time is irrelevant. Just because this position was vacant did not waive Carrier's right to eventually fill the position, as it chose to do here.

In addition, when Carrier chose to fill the position, it did not require the General Chairman's agreement due to the fact that the position is not within the Scope Rule.

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.