

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31739
Docket No. CL-32333
96-3-95-3-168

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Transportation-Communications International Union
(Illinois Central Railroad)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11137) that:

(1) Carrier violated the terms of the Agreement between the Parties beginning September 1, 1992, when Clerk R. H. Tindall was not afforded the opportunity to transfer from Jackson, Mississippi to McComb, Mississippi with his work.

(2) Carrier shall now be required to compensate Clerk R. H. Tindall a day's pay at the pro rata rate of Position No. 171/281 beginning September 1, 1992.

(3) Carrier shall now be required to transfer Clerk R. H. Tindall from Jackson to McComb in accordance with the Agreement.”

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.

On August 7, 1992, the Carrier issued a Section 9 Notice of Transfer stating that effective September 8, 1992, T/C Data Clerk Position No. 121/335-4 at Jackson "will be transferred to McComb, MS." and that "[a]ll of the duties currently performed by the position ... will be transferred to McComb." The notice further stated that the "incumbent ... of the position ... will be allowed to follow the work."

On August 14, 1992, the Carrier advertised a vacancy for TCS Clerk Position No. 121/335-4 at Jackson. On August 28, 1992, Claimant was awarded that position at Jackson.

The Carrier did not transfer Claimant's TCS Clerk Position No. 121/335-4 from Jackson to McComb as stated in the August 7, 1992 Notice. Instead, the Carrier created a new position at McComb. On September 23, 1992, the Carrier advertised a newly created Yard Coordinator/TCS Clerk Position No. 171/281 at McComb. Claimant did not bid on that position.

On October 12, 1992, Claimant was assigned additional duties for his position at Jackson.

This claim asserts that Claimant's work was transferred to McComb and Claimant should have been allowed to follow that work to McComb. Notwithstanding the Organization's arguments, we find the Organization has not carried its burden to demonstrate a violation of the Agreement.

The main thrust of the Organization's arguments focuses upon Section 9 on the Merger Protective Agreement (Appendix H). However, this Board finds that the Organization has not demonstrated a violation of that section. Under Section 9(e)(1) there is a right for a protected employee to transfer "[w]hen positions are abolished as a result of work being transferred to another location and positions are established to perform the work at the location to which transferred." However, based upon what is before us, the Organization has not shown that Claimant's position was abolished at Jackson and that his work was transferred to McComb. Although the Carrier originally intended to abolish the position and transfer the work, that action was not completed. Therefore, no right to transfer has been demonstrated.

In light of the outcome, this Board does not address the other arguments made by the parties.

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 24th day of October 1996.