

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32056
Docket No. CL-31958
97-3-94-3-253**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Chicago, Central & Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11034) that:

Case No. 1

- 1. Carrier violated the effective agreement when it failed to afford Mr. Kevin Dahm the opportunity to fill the position of Operator at East Cabin, Illinois, on June 30, 1993, in accordance with his status as senior qualified extra employee;**
- 2. Carrier shall now compensate Claimant Dahm eight (8) hours pay at the straight time rate of the above position (\$107.52) for June 30, 1993.**

Case No. 2

- 1. Carrier violated the effective Agreement when it failed to afford Mr. Kevin Dahm the opportunity to fill the position of Transportation Assistant at Dubuque, Iowa, on June 1, 2, 3, 4, and 5, 1993, in accordance with his status as senior qualified extra employee;**
- 2. Carrier shall now compensate Claimant Dahm eight (8) hours' pay at the straight time rate of the above position (\$129.20) for each date June 1, 2, 3, 4, and 5, 1993.**

Case No. 3

1. Carrier violated the effective Agreement when it failed to afford Mr. Kevin Dahm the opportunity to fill the position of Operator at East Cabin, Illinois, on June 1, 1993, in accordance with his status as senior qualified extra employee;
2. Carrier shall now compensate Claimant Dahm eight (8) hours' pay at the straight time rate of the above position (\$107.52) for June 1, 1993.

Case No. 4

1. Carrier violated the effective Agreement when it failed to afford Mr. Kevin Dahm the opportunity to fill the position of Operator at East Cabin, Illinois, on June 1, 1993, in accordance with his status as senior qualified extra employee;
2. Carrier shall now compensate Claimant Dahm eight (8) hours' pay at the straight time rate of the above position (107.52) for June 1, 1993.

Case No. 5

1. Carrier violated the effective Agreement when it failed to afford Mr. Kevin Dahm the opportunity to fill the position of Operator at East Cabin, Illinois, on June 4, 1993, in accordance with his status as senior qualified extra employee;
2. Carrier shall now compensate Claimant Dahm eight (8) hours' pay at the straight time rate of the above position (\$107.52) for June 4, 1993.

Case No. 6

1. Carrier violated the effective Agreement when it failed to afford Mr. Kevin Dahm the opportunity to fill the position of Operator at

East Cabin, Illinois, on June 5, 1993, in accordance with his status as senior qualified extra employee;

2. Carrier shall now compensate Claimant Dahm eight (8) hours' pay at the straight time rate of the above position (\$107.52) for June 5, 1993.

Case No. 7

1. Carrier violated the effective Agreement when it failed to afford Mr. Kevin Dahm the opportunity to fill the position of Operation at East Cabin, Illinois, on June 4, 1993, in accordance with his status as senior qualified extra employee;
2. Carrier shall now compensate Claimant Dahm eight (8) hours' pay at the straight time rate of the above position (\$107.52) for June 4, 1993.

Case No. 8

1. Carrier violated the effective Agreement when it failed to afford Mr. Kevin Dahm the opportunity to fill the position of Transportation Assistant at Dubuque, Iowa, on June 28, 29, and 30, 1993, in accordance with his status as senior qualified extra employee;
2. Carrier shall now compensate Claimant Dahm eight (8) hours' pay at the straight time rate of the above position (\$129.20) for each date June 28, 29, and 30, 1993.

Case No. 9

1. Carrier violated the effective Agreement when it failed to afford Mr. Kevin Dahm the opportunity to fill the position of Transportation Assistant at Freeport, Illinois, on September 13, 14, 15, 16, 17, and 20, 1993; the position of Yard Clerk at Dubuque, Iowa, on September 19, 1993; and the position of Yard Clerk,

Dubuque, Iowa, on September 13, 16, 17, 18, and 19, 1993, in accordance with his status as senior qualified extra employee;

2. Carrier shall now compensate Claimant Dahm eight (8) hours' pay at the straight time rate of the above Transportation Assistant Position (\$133.04) for each date September 13, 14, 15, 16, 17, and 20, 1993; eight (8) hours' pay at the \$13.85 per hour and thirty (30) minutes overtime at \$20.79 per hour of the Yard Clerk Position for September 19, 1993; and eight (8) hours' pay at the straight time rate of the above Yard Clerk Position (\$110.80) for each date September 13, 16, 17, 18, and 19, 1993.

Case No. 10

1. Carrier violated the effective Agreement when it failed to afford Mr. Kevin Dahm the opportunity to fill the position of Transportation Assistant at Dubuque, Iowa, on September 20, 21, 22, and 23, 1993; and the position of Yard clerk at Dubuque, Iowa, on September 20, 1993, in accordance with his status as senior qualified extra employee;
2. Carrier shall now compensate Claimant Dahm eight (8) hours' pay at the straight time rate of the above Transportation Assistant Position (\$133.04) for each date September 20, 21, 22, and 23, 1993; and eight (8) hours and thirty (30) minutes at the time and one-half rate of \$20.78 per hour for the Yard Clerk Position for September 20, 1993.

Case No. 11

1. Carrier violated the effective Agreement when it failed to afford Mr. Kevin Dahm the opportunity to fill the position of Transportation Assistant at Freeport, Illinois, on November 24, 1993, in accordance with his status as senior qualified extra employee;

2. Carrier shall now compensate Claimant Dahm eight (8) hours' pay at the straight time rate of the above position (\$133.04) for November 24, 1993.

Case No. 12

1. Carrier violated the effective Agreement when it failed to afford Mr. Kevin Dahm the opportunity to fill the position of Transportation Assistant at Freeport, Illinois, on December 7, 1993, in accordance with his status as senior qualified extra employee;
2. Carrier shall now compensate Claimant Dahm eight (8) hours' pay at the straight time rate of the above position (\$133.04) for December 7, 1993.

Case No. 13

1. Carrier violated the effective Agreement when it failed to afford Mr. Kevin Dahm the opportunity to fill the position of Transportation Assistant at Freeport, Illinois, on November 29, 30, December 1, and 2, 1993, in accordance with his status as senior qualified extra employee;
2. Carrier shall now compensate Claimant Dahm eight (8) hours' pay at the straight time rate of the above position (\$133.04) for each date November 29, 30, December 1, and 2, 1993.

Case No. 14

1. Carrier violated the effective Agreement when it failed to afford Mr. Kevin Dahm the opportunity to fill the position of Transportation Assistant at Freeport, Illinois, on December 20, 21, 27, and 28, 1993, in accordance with his status as senior qualified extra employee;

2. Carrier shall now compensate Claimant Dahm eight (8) hours' pay at the straight time rate of the above position (\$133.04) for each date December 20, 21, 27, and 28, 1993."

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.

Reviewed here are 14 separate claims (designated as "Cases") on behalf of the Organization's contention that the Claimant was denied the opportunity to fill a series of short vacancies between June 1 and December 28, 1993. Prior to May 19, 1993, the Claimant was an unassigned employee with headquarters at Freeport, Illinois. By letter dated May 19, 1993, the Claimant was notified as follows:

"Referring to Rule 25 (C) of TCU Agreement, providing for modification of your headquarter point. Effective May 26, 1993 your headquarter point will be Dubuque, Iowa."

Rule 25 (C) reads as follows:

"The company shall designate a headquarters point for each regular position and each regular assigned relief position and for employees not occupying such positions. Seven days' written notice will be given when designations are changed. The company may not modify such headquarters points more than once every 6 months."

No challenge was raised to the Carrier's right to apply this Rule as written, nor that the Claimant was properly notified of the change.

The Claimant at first advised that he would not accept the change of headquarters. The Carrier placed the Claimant in "voluntary status at Freeport", without the right to accept temporary vacancies away from that point. (It should initially be noted that no basis was suggested that the Claimant had any right to refuse the change of headquarters or that he had the right unilaterally to accept the change at some later time.) After proposing some conditions under which he would accept the change, the Claimant eventually indicated his acceptance without conditions by letter on June 29, 1993. The Carrier consulted with an Organization representative and then accepted the Claimant's headquarters change to Dubuque effective July 1, 1993.

The Carrier correctly states that some of the 14 cases were for requested assignments prior to July 1; others were duplicate claims for the identical assignments. Because of the Claimant's delay in accepting the headquarters change, the Board determines that the requests for assignment prior to July 1 have no merit. These are identified as Cases 1, 2, 5, 6, and 8.

Cases 3, 4 and 7 are duplicative of the above instances and thus are dismissed by the Board.

A portion of Case 9 relates to a position of Yard Clerk for September 13 and 16-19. The Carrier states without contradiction that this position was abolished on September 8. This portion of Case 9 is dismissed.

As to the remainder of the cases, the requests were for assignment to the position of Transportation Assistant at Freeport and, in one instance, at Dubuque.

Rule 16, Promotions, Assignments and Displacements, reads as follows:

"Employees covered by these rules shall be in line for promotion. Promotion, assignments, and displacements (except for promotion or assignment to excepted or management positions) shall be based on management's determination of fitness and ability and seniority; fitness and ability being sufficient, seniority shall prevail."

Rule 20, Short Vacancies, reads in pertinent part as follows:

“(b) Employees shall be selected to fill positions pending assignment by bulletin and all short vacancies in accordance with Rules 16 and 24.” (Emphasis added)

The Agreement further provides, however, that the position of Transportation Assistant is one specifically “exempted from [certain] labor agreement provisions”, including Rule 16. Thus, the Carrier has firm support for asserting that it may select employees for Transportation Assistant at its discretion. As a result, the Claimant had no contractual right to be selected. While other Rules are cited by the Organization, none overrides the exemption as to Transportation Assistant.

In summary, the Award will deny Cases 1, 2, 5, 6, 8, the latter portion of Case 9, 10, 11, 12, and 14 and will dismiss Cases 3, 4, 7 and the initial portion of Case 9.

AWARD

Claims denied and/or dismissed.

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 10th day of June 1997.