

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32081
Docket No. CL-32071
97-3-94-3-484

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Houston Belt & Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11086) that:

1. The Houston Belt & Terminal Railway Company violated the Rules Agreement effective April 15, 1972, as amended, when it denied clerical employe P. P. Shuman her seniority rights to occupy and perform service on a holddown during the period September 9, 1993 on Job 5302.
2. The Houston Belt & Terminal Railway Company shall be required to afford clerical employe P. P. Shuman eight (8) hours pay per day at the rate of PICL commencing September 9, 1993 and continuing every day that clerical employe J. K. Nutt performed service on a holddown on Job 5302.”

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 early September 1993, a vacancy existed on Job 5302. Claimant submitted a written request to protect the hold down, and commenced performing service on the job on September 9, 1993. After working the vacancy for several hours, Claimant was told that she would not be allowed to continue on the hold down beyond the end of that day's shift, 3:00 P.M. The next day an employee with less seniority assumed the hold down on Position No. 5302.

Claimant is seeking eight hours pay for each day that she was denied the opportunity to work Job 5302.

The Board has examined the extensive record made in this case, including the partial transcript of the Investigation conducted on Carrier's September 17, 1993 charge against Claimant, that she had:

"...failed to comply with instructions ...not to perform service in the OCC Department and that you were to remain in your assigned area of the Freight Agency. ...[Y]ou submitted a request and performed service on OCC position No. 5103 (PICL) on September 9, 1993.

In addition, on September 9, 1993, [you were] instructed not to work anymore OCC hold downs; ...[however] by letter dated September 14, 1993, you submitted a written request to be utilized on any available hold down in the OCC, contrary to ...instructions... ."

and concludes that, notwithstanding various instructions to the contrary, Claimant, under the explicit language of the Rules in effect on September 9, 1993, was privileged to request to be allowed to work Job 5302. When Carrier removed her from the job, after being properly assigned to the hold down on September 9, 1993, and thereafter allowed a junior employee to work the remainder of the hold down, the Agreement was violated.

The claim will be sustained. The remedy will be that requested by the Organization.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 9th day of July 1997.

**CARRIER MEMBERS' DISSENT
TO AWARD 32081 (Docket CL-32071)
(Referee Fletcher)**

The Majority decision flies in the face of Third Division Award 31820 which not only involved the same issue, but also the same Claimant. We will have to await the decision of the next referee as to which of the Awards is reasoned and controlling and which is not. We have no doubt that Award 31820 will be the only Award left standing.

Martin W. Fingerhut
Martin W. Fingerhut

Michael C. Lesnik
Michael C. Lesnik

Paul V. Varga
Paul V. Varga