

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37091
Docket No. MS-37755
04-3-03-3-91

The Third Division consisted of the regular members and in addition Referee James E. Nash when award was rendered.

PARTIES TO DISPUTE: (George Mitchell
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“The Union Pacific Railroad (hereinafter respondent) failed to assign Extra Board employee Mitchell (hereinafter petitioner) a vacancy that was open due to vacationing employee R. McKinney. Mr. McKinney (hereinafter McKinney) vacationed from July 30, 2001 through August 4, 2001. Mitchell was qualified as a lead clerk, was available and not assigned the position; thus, depriving him of a higher paying position that he was entitled to by the Global I extra board agreement. Respondent has from time to time assigned petitioner to cover the same position in controversy contrary to its decision in conference.

Respondent has failed to fully reimburse under Rule 14(c) tuition paid to attend classes that respondent had agreed were subject to Rule 14(c). This discrepancy was not forwarded by the petitioners' organization, since it states no rule exists to compel the respondent to reimburse petitioner under Rule 14(c). Petitioner must have recourse to cure disputes against respondent, if the petitioner's organization fails to represent and forward his claim, then the petitioner must use the mechanisms available to him to relieve the injustice. This is all the more imperative since judicial – federal court – avenues cannot attach as the board is aware of, until the board has had an opportunity to review and rule upon discrepancy.

The respondent has undermanned the extra board, allowing only one of three positions to be currently filled this violates the Global I guaranteed rotary extra board Article I section 2.

With the effects of increasing the workload of the petitioner by shifting jobs from their normally bulletined positions. Adopting the practice of having one clerk covering two posted positions, for example both in and out gates simultaneously; when two clerks were hired to perform the same tasks. Also respondent punished the petitioner for exercising his right to avail himself of educational opportunities made available by the respondent as a benefit to petitioner. Petitioner submitted his school schedules to management, now the carrier knowing his schedule, has assigned him multiple missed calls, and furthermore refuses to reimburse full tuition prices if petitioner withdraws from classes to comply with its request to be available to take calls from respondent.

Respondent has failed to assign open positions to petitioner when petitioner was either the only extra board employee on the extra board, or was next in rotation on the extra board.

Finally, respondent has failed to make available timekeeping records to petitioner claiming that either they are not available at the carrier's headquarters, or when the request is made at the installation level that they are not required to release the information to petitioner. Petitioner holds the point-of-view that if these documents were released then it would support petitioner's position. Again, since the petitioner's organization fails to forward this claim to the respondent attention and the respondent independently upon request by petitioner fails to release the documents then it follows that the board has jurisdiction to hear this matter."

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.

The Claimant alleged that contrary to custom, practice, and the Agreement, the Carrier failed to assign him to a vacation absence for the period July 30 through August 4, 2001. For that reason, he believes he is entitled to wages he would have earned had he been so assigned. The Carrier contends that no on-property claim was presented covering the vacation absence dispute for the period of time from July 30 through August 4, 2001.

While employed in a clerical position, the Claimant enrolled in a college degree program. He then submitted a request for 100% reimbursement for tuition costs under provisions of Rule 14(c). Rule 14(c) reads in pertinent part:

“(c) For the purpose of enhancing railroad employment opportunities for employees with more than one (1) year of service, tuition costs will be borne by the Company provided the following requirements are met:

1. Institutions of learning approved by the Company.
2. Courses must relate to job-related clerical technical skills.
3. Courses must be successfully completed.
4. Receipts documenting tuition costs must be presented to Supervisor within sixty (60) days of course completion.
5. Report of passing grade must be submitted to Supervisor.”

Having been denied 100% reimbursement for tuition costs, the Claimant petitioned the Board for support.

The Carrier argued that the Claimant neither sought nor received approval to attend the educational institution or courses selected. More importantly, he failed to show how courses taken related to his job as a Clerk. Consequently, according to the Carrier, the Claimant did not meet the requirements for 100% reimbursement for

tuition costs. Moreover, as pointed out by the Carrier and acknowledged by the Claimant, this issue was raised for the very first time before the Board.

The Claimant also made the assertion that the Carrier undermanned the extra board and thereby violated the Agreement and deprived him of work to which he was entitled.

The Carrier responded that all claims involving this issue were withdrawn. The claim is therefore moot and not properly before the Board. Without abandoning its position that all such claims are moot, the Carrier further argued its right to blank jobs where business requirements dictate.

The Claimant further protested that he was, effectively, punished for enrolling in classes when the Carrier called him for work during times that conflicted with his class schedules. The Carrier maintained that the Claimant's wounds were self-inflicted because his seniority would have allowed him to hold a regular job with specific hours and rest days. Having chosen to work from the Extra Board, he was then obligated to make himself available during call hours. The Carrier made the additional argument that the Claimant's first priority is to protect his job. The Carrier asserted that it could not reasonably be expected to adjust its operation to comply with the Claimant's class schedule.

In his final allegation, the Claimant insisted that the Carrier frustrated his efforts to meet his burden of proof by refusing to provide all necessary records. The Claimant requested that the Board grants his request for assistance in securing such records. The Carrier's position is that it is under no obligation to assist the Claimant in perfecting his case.

The Board studied and evaluated the array of evidence, exhibits, attachments and rules.

The Board notes that the Claimant filed numerous prior grievances. He also made a well researched, well presented – though faulty premised – oral presentation to the Board. He cannot, at the same time, represent himself as a novice with no understanding of the basic contractual procedural requirement that he must first seek redress under the Agreement's grievance procedures before proceeding to seek relief from the Board. Indeed, the Claimant freely acknowledged during his oral presentation that the major controversies before the Board and central to his case were

presented to the Carrier neither in a form cognizable as a grievance nor progressed as a grievance. Further, most of the issues were raised for the very first time during his oral presentation to the Board.

The record clearly establishes that claims for lost wages due to missed calls and under manning the Extra Board were withdrawn, therefore, they cannot be considered.

Issues having to do with the interpretation of Rule 14(c) and Carrier policy on reimbursement for tuition assistance were not orderly progressed through the system. The Board therefore has no jurisdiction to resolve the matter on its merits.

Although the Board is disposing of this dispute on the basis of procedural and jurisdictional error, the Board must mention that the Claimant's conclusion that he was due payment for lost wages for time not worked due to conflict with class schedule was based on the faulty premise that once the Carrier was aware of his class schedule and had approved it, the Carrier then was bound to adjust its operation to comport with the Claimant's class schedule.

The Claimant also took the novel position that he was entitled to 100% reimbursement for tuition costs because an undergraduate degree would be beneficial in his quest for advancement up through the clerical ranks and into management. If that were true, he could, presumably, make the identical argument for 100% tuition reimbursement as he pursued a Masters and a Doctoral degree while still occupying a clerical position.

Regarding the Claimant's allegation that the Carrier failed to assign him to open positions and held him responsible when unable to make contact due to faulty telephone equipment, the record held little evidence to support the allegation that the Carrier had violated the Agreement. However, the record did show that the Carrier made numerous unsuccessful attempts to contact the Claimant at the telephone number provided. Attempts by a variety of callers lent credence to the Carrier's assertion that the Claimant failed to provide a reliable telephone number. Having been made aware of the difficulty in reaching him at the number provided, it was incumbent upon the Claimant to provide a more dependable telephone number.

With respect to the Claimant's final point of contention that the Carrier frustrated his efforts to prove his case when it failed to provide requested

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documentation, we agree with the Carrier that it is not required to produce copies of documentation to hand over into the Claimant's possession.

AWARD

Claim 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 21st day of July 2004.