

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38063
Docket No. MS-38239
07-3-04-3-163

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

PARTIES TO DISPUTE: (Ronald G. Lewis and Oakland Agency Clerks
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“If the Carrier violated the 35 day provision set forth in the New York Dock-217 Implementing Agreement, ‘Attachment A’ Section 4 Item G, shouldn’t we be awarded severance in accordance with that Agreement?”

If the Carrier over extended the intent of Rule 42, and in doing so, the Carrier did in fact abolish our positions, shouldn’t we be granted severance, and an award be issued which clarifies the boundaries of Rule 42?”

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 occupied one of five positions at the Oakland Operating Department Agency. The Claimant was notified on September 13, 2002, that his

position of Agent was slated for abolishment under Implementing Agreement New York Dock-217 pursuant to Article II, Transactions. His position was one to be abolished and transferred from the Oakland Agency to the National Customer Service Center in St. Louis, Missouri. As part of the abolishment of positions, the Claimants involved elected to receive severance under NYD-217.

Thereafter, the record indicates the following. By Notice dated November 5, 2002, the Carrier indicated that the transaction notice of abolishment was "hereby cancelled." Such action was followed with the Carrier change of title from "agent" to "Chief Clerk" and protest by the Claimants.

The Claimants argue that the Carrier's reliance on Rule 42 is misplaced. The Carrier abolished the positions and moved the work to other areas. Thereafter, the Carrier failed to fulfill the obligations related to abolishment. The Claimants' election of severance under the Implementing Agreement was ignored as the Carrier claimed that Rule 42 provided proper authority to change hours, rest days, locations, assigned departments, duties and rates-of-pay. As per the questions of claim, the Board is asked to award severance. The Claimants argue that severance was wrongfully withheld in violation of NYD-217 and Rule 42.

The Board notes at the outset that it has no jurisdiction under New York Dock-217. That Implementing Agreement and its protective conditions including severance must be resolved by mechanisms under the language of that Agreement. Further, we note that the Carrier rescinded the abolishment of the Claimants' positions and we find no authority or evidence that such action violated any Agreement. As we do not consider New York Dock cases within the auspices of this Board, the remedy of a separation allowance is also beyond our authority.

With regard to the abolishment of the Claimants' positions, there is a lack of proof that such action occurred. The record indicates that the Carrier changed the Claimants' starting time, rest days, assignment and rate of pay by notice dated November 11, 2002. Rule 42 states in part:

"When any of the following permanent changes are applied to a regular position, the employee may displace under the provisions of Rule 41(a) within five (5) days from the effective date of change upon giving 24 hours notice."

There is no evidence of record that the Claimants' positions were ever abolished. While the Claimants maintain that they were abolished, the Board must resolve such disputes by the Rules of the Agreement and the record advanced and discussed on the property. Anything included within this record that was not discussed on the property is not proper for our consideration.

After full and careful review of all facts and evidence properly before the Board, we can find no Carrier violation of the Agreement. There is a lack of any proof that the Carrier abolished the jobs and even if, arguendo, the Carrier did maintain a position number and shift the employees to new work, there is nothing in this Agreement that would entitle the Claimants to a severance.

We are forced to conclude that if this were a New York Dock claim, severance might be considered, but it is not a dispute properly before the Board. Alternately, if this were a Rule 42 interpretation, no proof exists that the Carrier violated the Agreement or that severance would be a proper remedy. Accordingly, both questions must be answered in the negative and the claim before the Board dismissed.

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 25th day of January 2007.

