

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 41770  
Docket No. MS-42130  
13-3-NRAB-00003-130079

The Third Division consisted of the regular members and in addition Referee Patrick Halter when award was rendered.

(Latreshia Payne & Tammye W. Stinson  
PARTIES TO DISPUTE: (  
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

- “1. Carrier violated rules including the rule it stated pursuant removal of Claimants from the District 3 Clerical Seniority Roster, Rule 17. Rule 17(c) states: when forces are increased or vacancies occur, furloughed employees shall be returned to service in the order of their seniority right. Because Carrier allowed junior employees to return, while denying Claimants, which in turn denied Claimants the opportunity to maintain their names on the Roster, Carrier violated this rule. Carrier also violated Rule 17(a) which states first and foremost, When reducing forces, seniority rights shall govern. According to rule 17(b) in order for furloughed Clerks to remain in clerical ranks, address and subsequent changes in writing...or forfeit all seniority rights. Claimants did in fact have to give names. Carrier also violated Addendum No. 31-3 Agreement, and other rules of the KCS/TCU agreement. When on June 10, 2011 the Carrier removed employees Latreshia Payne and Tammye Stinson, from District 3 Clerical Seniority Roster, while retaining junior employees, Clerks Gloria Marshall and Donna Gowans. Carrier violated these rules because employees were not returned/retained in accordance with their preference to junior employees Gloria Marshall, and Donna Gowans as provided for in Rule 17(a) and Rule 17(b).

2. Carrier shall return Claimants Latreshia Payne and Tammye Stinson, to District 3 Seniority Roster effected (sic) immediately in accordance with their seniority in preference to junior clerks, Gloria Marshall, Donna Gowans. Carrier shall compensate Employees Latreshia Payne and Tammye Stinson, 2 and 1/2 times for any and all time paid by Carrier plus benefits afforded to Gloria Marshall, Donna Gowans, while Latreshia Payne and Tammye Stinson remained on furlough and there after.”

**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 Petitioners allege improper treatment in the handling and disposition of their seniority rights when the Carrier decided in or around early 2009 to transfer work the Petitioners performed in Shreveport, Louisiana, (Seniority District 3) to Kansas City, Missouri, (Seniority District 1). The Petitioners refer to violations of Addendum No. 31-3, other unspecified Rules in the KCS/TCU Agreement and Rule 17.

The circumstances underlying this matter, which give rise to the alleged violations of the above-mentioned Agreement and Rule 17 - Reducing Force, are the same circumstances underlying the alleged violations presented by Petitioner Stinson and rejected by the Board in Third Division Award 40597 with Referee Martin W. Fingerhut participating. Specifically, Third Division Award 40597 identified

Petitioner Stinson's allegations as violations to Addendum 31-3 and other Rules (unspecified) in the KCS/TCU Agreement when, Petitioner Stinson claimed, the Carrier allowed employees junior to her to continue working whereas she was "forced . . . into furlough status - Rule 17" by the transfer of work in 2009. In response to that contention the Carrier argued that the February 7, 1965 Agreement and subsequent Implementing Agreements covered the kind or type of dispute presented in Petitioner Stinson's claim, with the adjudication of such disputes exclusively reserved to Special Board of Adjustment No. 605.

The Board takes arbitral notice of Third Division Award 40597 and its adjudication of Petitioner Stinson's claim.

" . . . the fundamental issue on the merits required an interpretation of the February 7, 1965 Agreement and the attendant Implementing Agreements. It is no less clear, however, that the parties to the February 7, 1965 Agreement did not desire the Board to be utilized to settle disputes over the meaning or application of that Agreement."

As cited in Award 40597, Article VII, Section 1 of the February 7, 1965 Agreement created Special Board of Adjustment No. 605 " . . . for the sole purpose of hearing disputes under the February 7, 1965 Agreement . . ." and " . . . SBA No. 605 has issued no fewer than 518 Awards over the years interpreting that Agreement." In other words, SBA 605 is the forum with exclusive jurisdiction for addressing the merits of the Petitioner's claim which, consequently, led to the dismissal of her claim in Award 40597 on August 27, 2010.

The Board's findings with respect to adjudicating the merits of the Petitioners' instant dispute aligns with Award 40597. That is, SBA 605 is the sole forum conferred with jurisdiction and authority to adjudicate the merits of the Petitioners' claim implicating the February 7, 1965 Agreement, associated Implementing Agreements and Rule 17 when the Carrier transferred work in 2009 from Seniority District 3 to Seniority District 1. Given these findings and the arbitral precedent established in Award 40597, the Petitioners' claim must be dismissed.

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**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 November 2013.