

PUBLIC LAW BOARD NO. 3314

Parties: Brotherhood of Railway and Airline Clerks
and
Union Pacific Railroad Company

Statement of Claim: "Claim of the System Committee that:

1. The Company violated the Rules Agreement effective May 16, 1980, specifically Rules 2, 12, 38, 39 and 56, as well as the Kansas City Guaranteed Extra Board Agreement when they arbitrarily failed to post the known vacancy of General Clerk 245A on July 24, 25, 26, 27, 28, 31 as well as on August 1, 2, 3, 4, 7, 8, 9 and 10, 1980.

2. The Company shall now be required to compensate Clerk Gail A. Sollazo eight (8) hours pay each day at the pro rata rate of pay for July 24, 25, 26, 27, 28, 31 and August 1 and 2, 1980, in addition to compensation already earned on dates, based on the General Clerk's monthly rate of \$1,704.47.

3. The Company shall also be required to compensate Clerk Henry M. Anderson eight (8) hours pay each day at the pro rata rate of pay for August 3, 4, 7, 8, 9 and 10, 1980, in addition to compensation already earned on dates, based on the General Clerk's monthly rate of \$1,704.47."

Background: Rule 12 captioned "Short Vacancies" states in part:

"(a) New positions or vacancies of less than thirty (30) calendar days' duration are short vacancies and if they are to be filled, shall be posted as a 'Notice of Temporary Position or Vacancy.'

...

(c) Notice shall be posted on bulletin boards in the office or station

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where the vacancy occurs. The senior qualified employee in the office or station making written application shall be assigned ... "

The Guaranteed Extra Board Agreement states in part:

Article II, Section 2(a)

"Notices covering new positions and vacancies on assigned positions of five (5) to twenty-nine (29) days' duration, including bulletined positions, when it is necessary to fill such positions while under bulletin and pending assignment, will be posted for twenty-four hours in all offices in the extra board district where the vacancy occurs, and to extra board employees in that extra board district. Vacancies posted in accordance with this section shall be assigned to the senior qualified applicant from offices, including extra board employees in the extra board district making written application within twenty-four (24) hours from the time the notice is posted."

The operative facts are that a temporary vacancy of less than 29 days existed for Job 245A in the Yard Office of Kansas City. In accordance with Rule 12 (c) the job was bulletined. Claimant Sollazzo was the successful applicant on July 16, 1980. On July 22, 1980 Claimant Sollazzo was also the successful bidder for a permanent position, General Clerk Job #156.

The Carrier did not post for the remaining time on Job 245A, i.e., from July 16 to August 17, 1980, but instead filled the position on a day-by-day basis utilizing extra board employees. Claimant Sollazzo and Claimant Anderson filed seratim for the days from July 24 to August 10, contending the Carrier had breached Rule 12(c) by failing to bulletin Job 245A. The Organization contended that both Claimants were qualified and would have responded to the vacancy if called. Job 245A

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worked from 3:00 P.M. to 11:00 P.M. Job 156 worked from 7:00 A.M. to 3:00 P.M.

Organization's Position

The Organization states there is no dispute that the Carrier violated the Agreement when it refused to post the remaining time of the known vacancy for Position 245A. The Organization adds that the Carrier erred in filling the remaining vacant days by utilizing extra board employees. It stresses that there are no provisions in the Guaranteed Extra Board Agreement that gives the Carrier the privilege of using extra board employees to fill a temporary vacancy of five days or more without first posting the vacancy for all employees having the right to make application therefor.

The Organization maintains that the Carrier cannot be permitted to avoid or escape their financial responsibility by the thin thread that the Claimants suffered no monetary loss because they worked each claim date. The Organization asserts that the Carrier cannot, with impunity, be permitted to ignore the provisions of the Agreement. The Organization cites a number of Third Division Awards which support its position regarding the proper measure of damages in a case like this.

Carrier's Position

The Carrier asserts that, since the Claimants suffered no monetary harm, because they worked and were compensated on the respective claim dates, the Board should not award a penalty. The Schedule Agreement contains no provision for a penalty, and the Board

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would be amending the Agreement by arbitral fiat, were it to include or provide for such a penalty, when the Agreement does not so provide.

The Carrier, advances in this case, all the arguments it advanced in Award No. 10 (Case No. 10) for not awarding a penalty, i.e., for not sustaining the monetary claims of the two Claimants in this case because they were not damaged. It incorporates by reference all the arguments set forth in Award No. 10 (Case No. 10).

Findings: The Board, upon the whole record and all the evidence, finds that the employees and Carrier are Employees and Carrier within the Railway Labor Act; that the Board has jurisdiction over the dispute and that the parties to the dispute were given due notice of the hearing thereon.

The Board has delineated its views in Award No. 10 as to why it cannot award damages to Claimants who worked on claim days and thus have suffered no monetary loss. The Board feels compelled to come to this conclusion in view of the repeated and very recent decisions of the Federal Court which hold that it is an improper act to award damages to employees who have not incurred monetary loss, albeit the Carrier has clearly and overtly breached the Agreement.

The Board, therefore, finds that while the claims of the affected Claimants cannot, and should not, be honored, the Carrier should not be exculpated from its admitted breach of the Agreement, especially since it was committed over an extended period of time. To exculpate the Carrier in such circumstances would do violence to the

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covenant which the parties made, wherein they agreed to honor and abide by the terms of the Agreement they negotiated voluntarily and in good faith.

Accordingly, the Board finds that the Carrier should make a contribution of one day's pay for each of the cognizant days at pro rata rates to a recognized charity in Kansas City, Kansas, designated by the Organization, in the name of the Organization.

The Board also incorporates by reference, to the extent relevant, material and not inconsistent, its Findings made in Award No. 10 of this Board.

Award: Claims disposed of in accordance with the Findings.

Order: " The Carrier is directed to comply with the Award,
on or before June 30, 1983.

Jacob Seidenberg
Jacob Seidenberg, Chairman and Neutral Member

R. D. Meredith
R. D. Meredith, Carrier Member

W. E. Granlund
W. E. Granlund, Employee Member

May 29, 1983