

PUBLIC LAW BOARD NUMBER 3932

Award Number: 10

Case No. 10

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

STATEMENT OF CLAIM

From the various correspondence and from information gathered in the conferences held with the petitioning Organization, the Carrier perceives that the claim in this case asks on behalf of the Claimant D. Sims:

An additional two (2) hours' compensation for each of the following dates: December 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 1984 and January 2, 3, 4, 7, 8, 9, 10, 1985 "and continuing until the violation is corrected", in connection with the Carrier's allegedly allowing junior employee T. Robbins "to fill a temporary position at the Morrisville Substation".

FINDINGS

Claimant, at the time of the dispute in question, was employed as an Electrician at the Adams Maintenance of Way Base in Carrier's New York Division. By letter dated January 14, 1985, the Organization filed Claim on behalf of Claimant seeking compensation on the basis that Carrier violated the Agreement by refusing to allow Claimant to fill a temporary position per his seniority rights. The Claim was denied by Carrier.

The issue to be decided in this dispute is whether Carrier

violated the Agreement by denying Claimant an opportunity to fill the position in question.

The Organization contends that Carrier was obligated under Rules 4(a) and (b) of the Agreement to allow Claimant to fill a temporary position at the Morrisville Sub-station. The Organization initially alleges that Claimant was entitled to fill the position in question under Rule 4(a) and (b) since he was the "senior available employee" eligible for the position or to displace onto the position.

The Organization further contends that there is no question that the position in question existed, and cites a series of "Electric Traction Work Reports" to support its allegation that an employee (T. Robbins) was being used at the Morrisville Sub-station. The Organization additionally cites a claim paid by Carrier on December 12, 1984, which it alleges constitutes an identical claim to the one at hand. The Organization argues that the December 12, 1984 settlement, where Carrier awarded Claimant two hours per day compensation, further indicates that the present claim for the same level of compensation is not excessive as alleged by Carrier.

Finally, the Organization contends that the Claim is properly a continuing claim under Rule 64(e), since Carrier's refusal to allow Claimant to fill the position in question led to a situation resulting in daily violations.

The position of the Carrier is that the Organization has failed to establish any basis for the compensation claimed.

The Carrier argues that the request for compensation for the dates of December 10, 18, 19, 20 and 21 is entirely without foundation, since the employee allegedly working at Morrisville (Robbins) did not begin or end his tour of duty at Morrisville on any of those dates.

Carrier further argues that the Claim is excessive in several respects. Carrier first contends that the two hours per day request is excessive, since actual travel time between Morrisville and Adams is only one hour, and cites the work report entries of Robbins to substantiate its position. Carrier further argues that the claim is excessive and not continuing since Robbins' assignment at Morrisville ended on January 17, 1985.

Carrier maintains that Rule 4 of the Agreement, cited by the Organization for support, has no relevance to the Claim at hand since no "temporary position" existed at Morrisville. Carrier alleges that Robbins' work at Morrisville was very limited on the dates in question, and his presence there was largely for the mutual convenience of the parties involved. Carrier further alleges that the previously paid claim cited by the Organization was paid in error by a subordinate official, and is therefore not binding for purposes of precedent in the present case.

Finally, Carrier argues that although the assignment of Robbins to a location (Morrisville) other than his designated headquarters on the dates in question may not have been entirely proper under the Agreement, there is nonetheless no basis for any penalty payment to Claimant. Carrier argues that any minor violation was actually mutually beneficial to the parties, and that the Organization has failed to establish any harm suffered by Claimant as a result of the assignment. Carrier further argues that the practice was stopped when it became aware of its impropriety.

After review of the record, the Board finds that the Organization's claim must be denied.

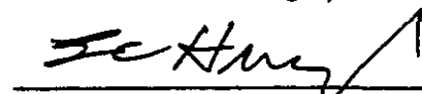
It is the opinion of this Board that the Organization has failed to establish Claimant's entitlement to the compensation claimed. The Organization relies on Rule 4(a) and (b) to establish Claimant's entitlement to the position in question and concurrently the compensation requested. However, there is no definite showing that a temporary position ever existed at Morrisville. It is true, as both parties admit, that Robbins did perform some service at Morrisville; however, it appears from his work records that the vast majority of his work on the dates in question was performed at Adams. Therefore, it is questionable whether a "temporary position" actually existed at Morrisville. Furthermore, even if such a position had been established, the

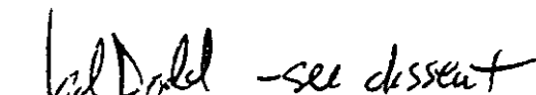
Organization has failed to demonstrate any contractual support for the two hours' compensation. Robbins' work records indicate only a one-hour travel period from Morrisville to Adams. Additionally, the Organization has failed to establish any basis for even one hour compensation, except as a penalty payment for rule violation. We reject such a penalty payment, both because it lacks contractual support and because the facts are sufficiently in doubt to render such a payment unwarranted. Finally, Carrier is not bound by its prior acceptance of the Claim since that Claim was allegedly allowed in error by a subordinate Carrier officer. We agree with those awards holding that such prior error does not serve as binding precedent in later proceedings.

AWARD

Claim denied.

  
\_\_\_\_\_  
Neutral Member

  
\_\_\_\_\_  
Carrier Member

  
\_\_\_\_\_  
Organization Member

DATE: 8-26-86

The Employees take exception both to the Board's factual finding that no temporary position existed at Morrisville, Pennsylvania; and the Board's conclusion that the Carrier need not be bound by decisions made by subordinate officers later found to be "erroneous" by higher Carrier officials.

The Board did find that, factually, employee Robbins reported to the Morrisville, Pennsylvania location on a substantial number of dates in December 1984 and January 1985. It is axiomatic that where an employee's time starts is his assigned headquarters. Rule 41 of the confronting Agreement merely confirms this principle. Since it is undisputed that employee Robbins started his time at Morrisville, Pennsylvania on at least some of the dates claimed, it must follow that Robbins was filling a new position located at Morrisville. Any comment that a majority of Robbins' duties were performed away from the Morrisville location is irrelevant to a determination of this Award. It is not an unusual practice in the MW Departments for employees to report to their headquarters, start their time, and then be transported some distance to a new location to perform work. Indeed, following the logic of Awards Nos. 1, 2, 3 and 4 of this Board, the location where employees actually perform service is little related to their assigned headquarters.

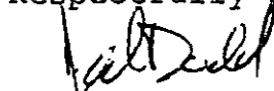
The facts conclusively show that a new position existed at Morrisville, Pennsylvania. The Claimant was a senior employee to Robbins and should have been allowed to so exercise his seniority to fill that position. He was aggrieved in two ways; first he had to undergo additional off-duty travel time to work and second, his

seniority rights were not fully honored by the Carrier. These are grounds enough for the penalty demanded by the Employees.

The Board's decision to allow the Carrier to overturn a previous determination of this issue on the merits as "erroneous" establishes a bad precedent for stability in the handling of grievances on the property. The Employees, as do other labor organizations, rely on the ability to have claims settled and contractual issues resolved on the "first" and "second" levels of dispute handling on the property. If such "first" and "second" levels of dispute handling on the Carrier's part are to have no binding precedent on the Carrier; then their inclusion in the collective bargaining agreement as steps in the grievance procedure is pointless. As the Board held in Award No. 6, agreements must be interpreted to obtain reasonable results. An Award that holds that "first" and "second" level Carrier decisions are not binding on the Carrier; merely advisory, is to give an unreasonable interpretation to the grievance handling procedures set forth in Rule 64.

For the foregoing reasons, the Employees must dissent from this Award No. 10, Case No. 10, Public Law Board No. 3932.

Respectfully submitted,



Jed Dodd  
Employee Member, Public Law Board No. 3932