

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 1011

TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION

and

CONSOLIDATED RAIL CORPORATION

AWARD NO. 134

Docket No. CR-4436

STATEMENT OF CLAIM

(a) The Carrier violated the Clerks' Rules Agreement effective July 1, 1979, particularly Rules 24(f) or 24(g), 40 and other rules when it failed to call and work Claimant Mr. W. L. Foucht for position of Class Clerk, from 4:30 P.M. to 10:00 P.M. at Buckeye Yard, Columbus, Ohio on January 1, 1988 and instead assigned and permitted junior clerk Mr. G. R. Griffith to work that position on that day at the punitive rate of pay.

(b) That Claimant Mr. W. L. Foucht must now be allowed eight (8) hours pay at the punitive rate of pay for January 1, 1988 on account of this violation.

(c) Claimant is senior, is qualified, was available and should have been called and worked in accordance with Rules 24 and 40.

(d) This claim has been presented in accordance with Rule 45 and must be allowed.

FINDINGS

In this matter, there is no dispute that the improper employee was called to work on a holiday, January 1, 1988 in the position of

Class Clerk. The Board finds, absent other circumstances, the Claimant herein would be entitled to a sustaining Award.

Here, however, another employee made a claim on January 2, 1988 for the same work. His claim indicates that a copy was sent to the District Chairman, and there is no contention that such copy was not in fact received by the District Chairman. At the initial step of the claim handling procedure, the claim was sustained and payment directed. Upon reference to a Letter of Agreement dated June 25, 1984, it appears that such payment was not in conformance therewith.

The Carrier takes the position that the claim here under review, dated January 5, 1988, duplicates and "pyramids" on the January 2, 1988 claim. The Carrier further contends that, because of this, it is not liable for any further payment.

The claim procedure under Rule 45 obviously places responsibilities on both the Organization and the Carrier. Where settlement of a claim is reached, it is not for the Board to find otherwise. The key here is the District Chairman's uncontested knowledge of the first claim. It therefore became the Organization's responsibility to determine which of the two claims should be pursued. (The results here might be different if there had been no advice to the District Chairman as to the first employee's claim.)

The Board finds no basis to require the Carrier to make two settlements for one Rule violation. It would also be inadvisable

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for the Board to step in and find that an agreed-upon claim resolution must simply be ignored or reversed.

A W A R D

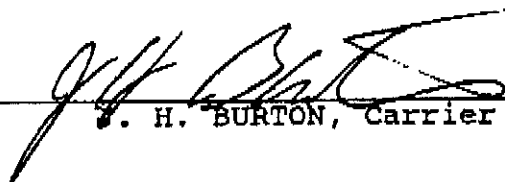
Claim denied.



HERBERT L. MARX, Jr., Chairman and Neutral Member



C. H. BROCKETT, Employee Member



J. H. BURTON, Carrier Member

NEW YORK, NY

DATED: 2/12/93