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AWARD NO. 15
NRAB DOCKET NO. GL-8358
CASE NO. 15
SSW FILE R-93-729-A-25
BRC FILE NR-27-32

SPECIAL BOARD OF ADJUSTMENT NO. 169

PARTIES) The Brotherhood of Railway and Steamship Clerks
TO)
DISPUTE) St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That Carrier violated the Clerks' current Agreement on January 30 and 31, 1954, when it worked C. C. Callahan, Dallas, Texas, Freight Station, on his regularly assigned rest days and compensated him at the straight time rate, instead of the time and one-half rate as provided in the Agreement.

(2) That C. C. Callahan be paid the difference between the straight time rate he was paid January 30 and 31, 1954, and the time and one-half rate to which he was entitled.

FINDINGS: The principle involved here was thoroughly and logically reasoned in Award 5879 by Judge Yeager. We are in agreement with the reasoning advanced in that case and think that a sustaining award is in line here.

AWARD: Claim sustained.

/s/ Frank P. Douglass
Frank P. Douglass, Chairman

/s/ W. E. Straubinger
W. E. Straubinger, Employee Member

/s/ L. C. Albert
L. C. Albert, Carrier Member

(DISSENTING)

Tyler, Texas
March 19, 1957

DISSENT OF CARRIER MEMBER TO AWARD NO. 15

Carrier Member must dissent in this award. In this instance Claimant was successful applicant for a bulletined position. He was assigned by bulletin January 15, 1954, but was not actually transferred until February 4, 1954, due to no extra employee qualified and available to relieve him on the position he was vacating, which was a rest day relief assignment.

Rule 10-4 relating to transferring successful applicants to bulletined positions provides:

"An employee awarded a bulletined position will be transferred promptly to such assignment after issuance of assignment bulletin, and unless assigned within the assignment period as provided in these rules, will be paid for wage loss suffered."

Claimant suffered no wage loss in this case. The rate of the position he was vacating was higher than rate of the position for which he filed bid. The rest days of the two positions were on different days of the week. Claimant continued to observe rest days of the position he was vacating until actually transferred, but claimed time and one-half rate on two of the intervening rest days of the other position, on the theory that in working on such days he was working on rest days of his assignment.

To hold that a person assigned to a position must take the rest days of the position before actually transferred thereto is contrary to the rules. Rule 10-4 is a special rule covering the particular subject of such transfers. Express provisions set forth the rights of the employee who is not transferred within the assignment period. The rule does not give him right to any of the conditions of the position to which assigned until actually transferred. The rule does not provide that he shall receive the rate of pay, the hours of assignment, nor the rest days of the position. Instead it protects him against wage loss.

As stated, Claimant suffered no wage loss. Neither was he arbitrarily held on the relief assignment he was vacating. The Employees do not deny that there was no qualified extra man to relieve him. They argue that he could have been transferred by requiring all employees he relieved to work on their rest days. This, in effect, would have been requiring three employees to work on their rest days to permit one employee to sooner get rest days he desired. The rules do not require such measures to effect transfer of an employee who desires to change from one position to another. Rule 10-4 sets forth the complete penalty if transfer is not made within the assignment period. Settlements cited in similar cases regarding the application of Rule 10-4 bear out this fact.

In the opinion of the undersigned, Third Division, NRAB Award No. 5879, mentioned in Findings of this Award 15, conflicts with other Third Division Awards which are in point here, particularly Awards 3633, 3551 and 4515.

For these reasons, I dissent.

/s/ L. C. Albert
L. C. Albert, Carrier Member