

AWARD NO. 13
Case No. 11

SPECIAL BOARD OF ADJUSTMENT NO. 421

THE ORDER OF RAILROAD TELEGRAPHERS)
 vs)
NEW YORK CENTRAL RAILROAD, EASTERN DISTRICT)
(except Boston and Albany Division) and)
NEW YORK DISTRICT)

STATEMENT OF CLAIM:

1. Carrier violated the terms of the agreement between the parties when at Benson Mines on August 31, September 1, 2, 4, 6, 7, 8 and 9 it failed and refused to pay J. A. St. Croix for posting and E. P. McAdam for instructing.
2. Carrier shall be required to pay J. A. St. Croix for posting at the rate of \$1.887 per hour for eight hours each day on August 31, September 1, 2 and 4, and nine hours each day for September 6, 7, 8 and 9; and shall further be required to pay E. P. McAdam for instruction at the rate of \$0.451 for eight hours each day on August 31, September 1, 2 and 4, and nine hours each day for September 6, 7, 8 and 9.

OPINION OF BOARD:

On August 30, 1960 employe J. A. St. Croix displaced Extra Agent E. P. McAdam who was covering the position of the regular Agent at Benson Mines, New York -- one E. S. Wright. The latter employe was marked off his position until further notice at the time of this displacement. Before being allowed to physically assume the duties of the agency position at Benson Mines, St. Croix was notified by Carrier's Rules Examiner that he would have to be qualified to work the position. St. Croix therefore posted on the dates specified in the claim.

He was instructed in these duties by Extra Agent E. P. McAdam. On September 9, 1960 the Agent at Carthage exercised his proper authority in approving St. Croix as qualified for the agency position at Benson Mines.

While posting on the position in question, St. Croix bid in a temporary position at Gouverneur. He assumed the latter position beginning September 10, 1960, and so did not actually cover the position at Benson Mines. This fact is not relevant to the questions presented by the subject claim, however.

Claimant McAdam instructed St. Croix in the duties of the Benson Mines position with the knowledge and tacit approval of the Carrier. Thus he was constructively directed to instruct St. Croix. We think it is the clear intent of Article 16, Section 2 that an employe who is directed to provide instruction to another employe who is posting is entitled to the additional compensation set forth in that provision. There is no language elsewhere in the contract that conflicts with Article 16, Section 2, in this respect.

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A conflict does appear in the contract with respect to the request of St. Croix for posting and qualifying time pay. Under the language of Article 27(f) an employee "who exercises displacement rights will be given a reasonable length of time without pay in which to qualify before taking over the new assignment . . ." Under Article 16, Section 2(c) employees who obtain positions by displacement are granted a specified rate of pay "for posting and qualifying time in such instances as posting and qualifying time may be necessary in the judgment of the local official. . ."

Since the Carrier has the responsibility for determining whether an employee is qualified, it would appear that under Article 27(f) an employee who displaces into a position for which the Carrier considers him not qualified is not entitled to pay for the time required to become qualified, while under Article 16, Section 2(c) he is entitled to a specified rate of pay for such time. The same contrast in treatment is given by these two provisions to employees who obtain advertised positions through bids.

This conflict in agreement language can best be resolved by negotiation between the parties. The claim with respect to St. Croix is therefore remanded to the parties for further joint consideration. In the event that the controversy on this part of the claim is not resolved within 30 days from the date of this award, said controversy shall be returned to the Board.

AWARD:

Claim sustained with respect to employee E. P. McAdam and remanded to the parties in accordance with the Opinion of Board with respect to employee St. Croix.

/s/ Lloyd H. Bailer
Lloyd H. Bailer, Chairman

/s/ L. Faulds
L. Faulds, Carrier Member

/s/ R. J. Woodman
R. J. Woodman, Employee Member

New York, N. Y.
July 24, 1962

