

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISIONAward No. 25331
Docket No. 45006
02-1-00-1-M-2075

The First Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(Northern Illinois Regional Commuter Railroad (Metra)

STATEMENT OF CLAIM:

"Claim of Metra/Electric Engineer E. J. Cole for \$235.22 loss of earnings, account of not being notified of his displacement off his regular assignment until 8:00 p.m. Sunday, August 22, 1999."

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This case presents the appeal of the claim in behalf of Metra/Electric Engineer E. J. Cole, Employee No. 5773 ("Claimant"), for payment of lost earnings on Sunday Combination No. 210 (\$235.22) on August 22, 1999. The gravamen of the claim is the undisputed failure of the Crew Caller to notify the Claimant of his displacement until it was too late to exercise his seniority in accordance with controlling Agreements. In that connection, the original claim filed by Engineer Cole cites a violation of Rule 16 (a), which reads as follows:

"RULE 16. ENGINEER ASSIGNMENTS. (a) An Engineer who desires to exercise his rights, without having been displaced, must indicate such in sufficient time so that the Engineer who is displaced, receives notice to that effect on or before the arrival of the final trip on the last day he performs service thereon. An Engineer exercising rights in this manner may not exercise his rights again until the expiration of thirty (30) days. He can, however, exercise rights to an open job or temporary vacancy as entitled to under the rules."

The facts of record show that as of August 21, 1999 the Claimant held an assignment comprised of Weekday Combination No. 30 and Saturday Combination No. 116. On August 21, a Saturday, a senior employee notified the Carrier at approximately 7:53 A.M. that he was exercising his rights onto the Claimants assignment, effective Monday, August 23. The Claimant, who went on duty on August 21 at 3:55 A.M., did not receive notice of his displacement prior to completing his assignment at 10:40 A.M. He left work at that point and was eventually notified of his displacement at approximately 8:00 P.M. on August 22. The Claimant subsequently submitted a "Time Return and Delay Report," requesting compensation equal to the earnings of the employee assigned to Combination No. 210 on Sunday, August 22, as follows:

"Claiming Combination #210 Day for Sunday, 22, 1999. Was not informed of being bumped Sat. 21, 1999 while job was working (Rule 16 A) could have worked Sunday. Was informed Sunday at 8:00 p.m. when I called."

The Claimants' request, citing Rule 16(a) and asserting that he would have exercised his rights by marking up on Combination No. 210 had he been notified the previous day that he was being displaced, was denied by timekeeping.

On December 16, 1999, Local Chairman Wendell J. Leith appealed Engineer Cole's claim for time lost on Sunday Combination No. 210 (\$235.22) to Superintendent P. Zwolfer, asserting the foregoing facts and referencing Rule 16(a), supra, but incorrectly citing also Rule 16(i), which reads as follows:

"A displaced Engineer shall be released after tying upon his last working day. Such Engineer shall not be held for drag or off days when there is no further work in the assignment."

Superintendent Zwolfer responded by letter of January 21, 1999, reading in pertinent part as follows:

"Reference your letter of December 16, 1999 requesting a day's pay on behalf of Engineer E. J. Cole for Sunday, August 22, 1999, which was declined by Time Correction Report dated October 18, 1999.

In your original letter, you claimed Mr. Cole was displaced by Engineer R. A. McPheeters, in accordance with Rule 16(a) on Saturday, August 21, 1999 but was not notified by the Crew Caller office until 8:00 P.M., Sunday, August 22, 1999, which was too late to exercise his seniority to Sunday Combination No. 210.

Crew Caller record's confirm your allegation, however, Rule 16, paragraph (i) which you claim was violated does not refer to a penalty payment if this rule is violated."

* * *

At the next level of appeal, the Organization asserted the undisputed facts but again miscited to Rule 16(i), on which basis the claim was denied. During claims conferencing the matter remained unresolved, albeit the Organization at that level reasserted the original claim that Rule 16(a), not Rule 16(i) governed the claim for compensatory damages. The Carrier denied the claim on grounds that Rule 16(i) had not been violated and that the Organization's reassertion of Rule 16(a) during claims conferencing was fatally untimely under Rule 43 Time Limits on Claims.

The Organization certainly could have been more clear and careful in articulating its position in the interim appeals on the property handling. But in the final analysis, we are persuaded that the Organization has proven the violation of Rule 16(a) asserted in the initial claim and perfected in the final stages. Nor are we persuaded on this record that the Carrier convincingly demonstrated its affirmative defenses of untimely amendment of the claim or equitable estoppel based on detrimental reliance. A reality-based analysis of the record shows a lack of support for the Carrier's highly technical interpretation of the appeals process on the property.

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AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 28th day of June, 2002.