

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25467
Docket No. 44949
03-1-00-1-U-2160

The First Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim of Union Pacific Railroad Engineer T. E. Bryan for one (1) basic day (each date) in excess of all other earnings, account restricting his seniority on various days (30 days) from May 31, 1999 to June 30, 1998. (Three claims totaling \$4,891.72 and one (1) claim for a 130 mile basic day)."

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.

On April 15, 1998, the parties signed an Agreement for the implementation of the St. Louis Hub, including the territory and work from Bloomington, Illinois, south. Subsequently, on August 27, 1998, the parties signed an Agreement encompassing the route from St. Louis/East St. Louis/Dupo to Chicago via Bloomington (not including Chicago) into the St. Louis Hub. Under the provisions of Article VII of the Hub Agreement, engineers required to relocate due to the

implementation of the St. Louis Hub were given an election of lump sum moving benefits in lieu of the relocation provision of the New York Dock Conditions. Section B(6) states: "Engineers receiving an 'in lieu of' relocation allowance pursuant to this Implementing Agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years."

The present dispute arose when the Claimant, a regular engineer working at Bloomington, Illinois, due to forced relocation, had to exercise his seniority to another terminal due to a decline in business. The Claimant went to Villa Grove, Illinois, and marked up at that location. Engineer B. W. Kopaskey, who is senior to the Claimant, also exercised his option to relocate from Bloomington to Villa Grove.

When business improved at the Bloomington, Illinois, location, the Claimant sought to exercise his seniority back to that location. He was refused due to the fact that Engineer Kopaskey had been allowed to fill the position at Bloomington.

The Organization contends that Engineer Kopaskey should not have been permitted to return to Bloomington under the terms of the St. Louis Hub Agreement. It is the Organization's position that Engineer Kopaskey accepted an "in lieu of" relocation allowance pursuant to Section B(6) and therefore he was required to remain at Villa Grove for a period of two years. By permitting Engineer Kopaskey to fill a position at Bloomington, the Carrier improperly restricted the Claimant's exercise of seniority to that location, in the Organization's view. It seeks a basic day penalty for the period of time in which the Claimant was unable to exercise his seniority.

The Carrier defended on the property by issuing a general denial of the claims. The Carrier contended that the Organization had not met its burden of establishing that there was an Agreement violation and further contended that the penalty sought was excessive.

Based on our review of the record, it is clear that the Organization has established a prima facie case. Once the Organization laid a factual predicate showing that the Agreement was violated, the burden shifted to the Carrier to refute the claims. Not only did the Carrier fail to refute the Organization's assertions, but in its February 17, 2000 correspondence, the Carrier conceded that Engineer Kopaskey had been improperly allowed to move to Bloomington. The Carrier's letter states in pertinent part:

"The Carrier's records indicate that Engineer B. W. Kopaskey... applied for and was granted a \$20,000 St. Louis Hub relocation allowance. The Relocation Agreement states:

I understand that in accepting any of the three (Relocation Options above), I will be required to remain at the new location, seniority permitting for a period of two years.

This two-year hold down applies to filling temporary assignments and old heading jobs as well, and as such Mr. Kopaskey should not have been allowed to fill any jobs at Bloomington. The record indicates that CMS allowed Mr. Kopaskey to fill a temporary assignment on the ZS127 assignment. This assignment has since been abolished and Mr. Kopaskey will not be allowed to fill assignments of any kind at Bloomington." (Emphasis added)

As such, by the steps outlined above, the Carrier is confident this issue has now been put to rest.

In light of the foregoing acknowledgement by the Carrier, the Board finds that the Agreement violation has been proven.

The Carrier advanced several additional arguments in its Submission to the Board. It asserted that the claims filed by the Organization have been improperly combined. We note, however, that the Carrier's post conference letter treated the claims as a single dispute and indeed there was a logical basis for doing so. Three claims essentially track in sequence the days during which the Claimant was prevented from exercising his seniority. Their subject matter relates to the same underlying dispute and no prejudice has been shown by their combination at this level. We therefore reject the Carrier's argument and decline to dismiss the three claims alleging a violation of the St. Louis Hub Agreement.

There is a fourth claim (Carrier File 1195324) which alleges that the Carrier violated Article 40 of the Schedule Agreement by not allowing the Claimant to fill a temporary vacancy at Bloomington while he was working off the Villa Grove Extra Board. It seeks a basic day penalty. This claim was not developed on the property.

The Organization had the burden of establishing the elements of the claim. Having failed to do so, that particular claim must be denied.

The Carrier also raised a number of specific objections to the remedy requested by the Organization. It argued that the Claimant was "laying behind the log;" that the Organization should bear some responsibility for not alerting the Carrier to the matter until June 13, 1999, the date the first claim was filed; and that no financial harm was shown. These are matters that should have been raised on the property. The Board functions as an appellate body. We are not authorized to consider new arguments which the parties themselves have not addressed during the claims handling process. To do so would be contrary to the purpose of the dispute resolution procedure which, after all, is designed to focus attention through various levels of review and discussion on the property to the specified issues.

That being the case, we shall sustain the remaining three claims in their entirety. There is need for a remedy when the Agreement has been violated and the exercise of seniority has been restricted. The basic day penalty is an appropriate and customary means of enforcing the arbitrated agreement in cases of this nature. See First Division Awards 24939, 24884 and 24883.

AWARD

Claim sustained in accordance with the Findings.

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 20th day of August 2003.