Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award Number 4244
Referee Edward L. Suntrup Docket Number 4218

PARTIES TO DISPUTE: Allied Services Division/Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes, AFL-CIO

Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (P-146) that:

1. The Company violated the current agreement, particularly Rules 19a, b, c, 28c, 29 and other related rules when it required Sgt. W. Heneks to suspend work during his regularly scheduled hours to absorb overtime by changing his assigned hours.

2. The Company shall be required to pay Sgt. W. Heneks four (4) hours at time and one-half rate.

OPINION OF BOARD: The facts of this case are that the Claimant, W. Heneks, was injured while covering his assignment on June 8, 1981 and he returned to service on July 3, 1981. A claim was filed on October 16, 1981 by the Organization by which it was alleged that the Carrier had violated certain Rules of the current Agreement when it assigned the Claimant to work the hours of 9:00 A.M. to 5:00 P.M. on August 23, 1981. The hours of the Claimant's assigned position at that time were 1:00 P.M. to 9:00 P.M. The Organization charges that the Carrier changed the Claimant's work schedule on August 23, 1981 and by so doing suspended work during his regularly scheduled hours in order to absorb overtime. The claim is for time and a half for four (4) hours work.

The defense of the Carrier for its actions on August 23, 1981 is that Mr. Heneks had returned to work on "restricted" status because of his recent injury and that the change in hours was for the convenience of the Claimant "during his recuperation period". The Carrier also argues that an oral agreement had been made between the Carrier and the Claimant because of his restricted duty status, which negates the claim and which permitted the assignment of the Claimant to the hours in question. The Carrier states the following in its declination letter of October 18, 1982 to the Organization: "(t)he assigned hours of claimant's position was properly changed by mutual agreement". But by mutual agreement between whom? The Carrier appears to be arguing here that a unilateral agreement was made between itself and the Claimant with respect to assignment of hours on the day in question. Companies in American labor relations, by both tradition and law, cannot make agreements with individual members of collective bargaining units. This principle is so basic that it need no elaboration here (Fourth Division Award 3702).

On the other hand, it is the contention of the Organization that a written, and not an oral agreement was controlling and that such temporary agreement had been made between the Carrier and the representative of the Organization. This alleged written agreement, which is part of the record as Employes' Exhibit No. 7, contains language which says that the Claimant's hours or rest days will not be changed because of his return to work on restricted duty. It is the claim of the Organization that this written agreement was made July 23, 1981, or apparently some 20 calendar days after the Claimant returned to work on July 2, 1981 after his June 8, 1981 accident. The Board has closely examined this document. The document clearly references the Claimant and the issue of a "restrictive duty program" but it is neither dated nor does it have duly authorized signatures. From an evidentiary point of view it is not an agreement but simply a piece of paper with a statement written on it. As such this document does not fulfill substantial evidence requirements and its validity as evidence must be dismissed.

Nowhere in the record it is denied by either side to the dispute that the Claimant returned to duty in early July on restricted status. This effectively meant that the Claimant was permitted to return to work without full ability to perform all of the normal functions of his position. The Board has studied the Agreement provisions referenced by the Organization in its claim. There is no guidance in Rules 19, 28 or 29, in pertinent part, with respect to procedures for the Carrier to follow with employees who are permitted to return to work on restricted status. Although it is not completely clear in the record, apparently restricted status employees have been accommodated in the past by means of "gentlemen's agreements" or by means of special, temporary agreements signed by the Organization and the Carrier. In the instant case the Organization has been unwilling to accept the principle that the Carrier has unilateral rights to deal with this idiosyncratic situation, nor has it proven to the Board that it negotiated a legitimate special contract. None of this means, as noted earlier, that the Carrier has the right to implement an individual contract with an employee with restricted status.

Since there is insufficient evidence of probative value in the record to warrant conclusion that the Carrier violated either the current Agreement or any special Agreement the claim cannot be sustained.

FINDINGS:

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

The Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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.

The parties to said dispute were given due notice of hearing thereon.

The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:

Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1985.