

Award No. 3341
Docket No. 3247
2-Pull-EW-'59

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES' DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement The Pullman Company permitted employes to exercise displacement rights before they were legally displaced in accord with Rule 46.

2. That Electrician T. E. Lee be compensated 8 hours pay for September 30, and October 1, 1957, as he was prevented from working on these days due to this violation.

EMPLOYEES' STATEMENT OF FACTS: Under date of September 25, 1957, the carrier posted a notice advising Electrician Y. Cano that the position he was holding would be abolished at the close of the shift on the first of October, 1957.

Electrician Cano notified the carrier on September 25, 1957, that he wished to displace Electrician Monteilh. Electrician Monteilh notified the carrier that he wished to displace Electrician Foster. Electrician Foster notified the carrier that he wished to displace Electrician Lee these displacements to take place September 30, 1957.

On September 25, 1957, the committee protested to the carrier the effective date of these displacements being September 30, due to the fact that Electrician Canos' position would not be abolished until the shift closed on October 1, which meant that he was not displaced until then. Accordingly he could not displace Electrician Monteilh until he himself was displaced. Nor could the other displacements take effect until the employes were properly displaced.

The carrier, even though the committee protested, permitted the displacements to go in effect on September 30. This resulted in Electrician

and the rest days of his new position (Monday and Tuesday) were not the same. Thus, the relief days of Lee's new position fell on September 30 and October 1 rather than October 6 and 7, the dates on which they would have fallen had he remained in his old position. It should be noted, however, that this change in Lee's relief days did not decrease the number of hours worked by Lee during the pay periods involved or the amount of compensation earned by Lee. Lee worked 72 hours in second half of September and 88 hours in first half of October. Since the rates of both positions were the same (\$2.308 per hour) Lee was in no way harmed because of the change in his rest days as a result of his displacement, effective September 30, 1957. Additionally, the claims cited by the organization as supporting its contentions are not pertinent to the instant dispute (Exhibits G and H).

Awards of the National Railroad Adjustment Board support the company's position in the instant dispute. In a dispute involving the identical principle present in the instant case, which dispute was progressed to the Third Division, National Railroad Adjustment Board, the organization (ORC&B) filed claim against The Pullman Company alleging violation of the agreement (Rule 38) and took the position that the initial error made in the assignment of one conductor (Conductor Fritsche) was perpetuated in the assignment of another employe (Conductor Stuber) on the ground that Stuber would have been worked in a different assignment if Fritsche had been properly handled. As in the instant case, the company conceded the initial error and paid for that error but denied further liability. In denying the claim that the error made in connection with the first employe was perpetuated, the Board stated in Award 3831 (Adolph E. Wenke, Referee) that Stuber had no fixed rights to the assignment claimed and that the agreement was not violated. Also, see Third Division Award 5734 on the propriety of this principle (Livingston Smith, Referee).

CONCLUSION

In this ex parte submission the company has shown that there has been no violation of the agreement in connection with the displacement of Electrician Lee on September 30, 1957, and that all displacements subsequent to the displacement of Electrician Monteilh were made in full conformity with the provisions of Rule 46. Also, the company has shown that having paid for the initial error no further liability accrues to management. Finally, the company has shown that awards of the National Railroad Adjustment Board support the company in this dispute.

The Claim that Electrician Lee is entitled to be compensated 8 hours for September 30 and October 1, 1957 is without merit and should be denied.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

We take note of carrier's contention that it should not be required to compensate more than one employe as a result of the premature displacement which Y. Cano was permitted to exercise, thereby precipitating the successive displacements of other employes, including Claimant Lee. However, carrier's local supervision was given ample advance notice of protest against this obvious agreement violation but failed to take corrective action. Under these circumstances, we do not think carrier should be relieved of liability for the loss of two day's pay suffered by Claimant Lee.

AWARD

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Harry J. Sassaman
Executive Secretary**

Dated at Chicago, Illinois, this 16th day of October, 1959.