

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Carl B. Stiger, Referee

PARTIES TO DISPUTE:

THE GRAND CENTRAL TERMINAL

THE ORDER OF RAILROAD TELEGRAPHERS

STATEMENT OF CLAIM: "That, under Rule 14 (b) of the agreement between the Grand Central Terminal and Order of Railroad Telegraphers, Yale S. Thomas should be permitted to exercise displacement in the telegraphers' ranks, on the district where he holds seniority rights therein, due to his having been displaced on the position of second trick yardmaster at SS 'B,' Grand Central Terminal."

CARRIER'S STATEMENT OF FACTS: "On May 7, 1940, M. J. Geoghegan relinquished his position as general yardmaster at the Grand Central Terminal and exercised displacement in the yardmasters' ranks to the position of outside yardmaster on the first trick at SS 'B,' Grand Central Terminal.

"Under date of May 4, 1940, Trainmaster Offerman had posted the following notice of the displacements to be effected:

'TO ALL CONCERNED:

M. J. Geoghegan will displace Frank Debois effective Tuesday morning, May 7th.

Frank Debois will displace Yale Thomas Tuesday, May 7th, and take hold-down on First Trick at SS-B in place of Samuel McNichol.'

"Upon learning that he was to be displaced, Mr. Thomas addressed the following letter under date of May 4th to Chief Signalman Geraghty, in which he declared his intention to exercise his rights to displace on a position of relief train director:

'Please note attached letter from Trainmaster Offerman dated May 4th 1940 advising me that I have been displaced by Yardmaster Frank DeBois from position of second trick yardmaster Tower B Lower Level, G. C. T.

'As I am the youngest yardmaster on yardmaster's roster, and unable to exercise displacement rights on any yardmaster's position, I hereby exercise displacement rights under the provisions of the O. R. T. Agreement in Grand Central Terminal, on Mr. J. J. Strever, Train Director, Regular Relief No. 2 G. C. T.'

"Mr. Thomas furnished a copy of the above quoted letter to Local Chairman Williams of the telegraphers' organization. Under date of May 16th, Local Chairman Williams wrote Chief Signalman Geraghty referring to Mr. Thomas' letter of May 4th, and objecting to Mr. Thomas' exercising dis-

"It will be observed from the foregoing correspondence that Thomas' claim under Rule 14 (b) was considered in the conference of July 29, 1940, and that the Terminal Manager decided Thomas was not entitled to displacement under this rule, in which decision the Terminal Committee concurred. After a lapse of nearly sixty days the Terminal Manager wrote the General Chairman, reversing the decision given on July 29, 1940. We insist that the first decision of the Terminal Manager made on July 29, 1940, was right then and is still right, and we ask that the carrier's claim be denied for the following specific reasons:

First: It was necessary to **liberally interpret** the Yardmasters' Agreement, or to be more accurate, to in substance write a new rule into that agreement before Geoghegan could be considered, after the fact, as having the right to displace DeBois, who claimed Thomas position on May 25th, 1940.

Second: On May 16th, 1940, a position as relief yardmaster at Mott Haven was posted for bids, Thomas making application for this position on May 20, 1940, and in accordance with Rule 8 (b) of the Yardmasters' Agreement, which provides the management shall be the judge as to qualification, he was assigned to this position on May 23, 1940. Then, on May 27, 1940, two days after his removal as Yardmaster at Tower B, Thomas voluntarily surrendered this, the last position to which he held assignment as Yardmaster.

Third: Rule 8 (c) of the Yardmasters' Agreement has no bearing, as Thomas had no position to which he could revert when he surrendered the Relief Yardmaster position at Mott Haven, his former position having already been claimed by DeBois, a senior Yardmaster, on May 25, 1940, even though such displacement was in violation of Rule 8 (d) of the Yardmasters' Agreement.

Fourth: The record shows that by an act of his own free will Thomas, on May 27, 1940, surrendered the position to which he was last assigned as Yardmaster. Since he voluntarily surrendered this position, any claim that he was displaced **through no fault of his own** is without foundation. Even if the contention of the carrier with respect to the meaning of Rule 14 (b) is correct, which we insist it is not, the fact still remains that Thomas voluntarily surrendered his last bid in position as Yardmaster. The carrier does not dispute the right of Thomas to retain his last bid in position as Yardmaster, but at the same time contends he was displaced as Yardmaster **through no fault of his own**, thus attempting to accord Thomas the right to travel in two directions at the same time."

OPINION OF BOARD: Rules 11 (f) and 14 (b) of the Telegraphers' Agreement, effective May 1, 1940, read:

"11 (f): Employees absent from their regular department filling any advanced position in the same or other operating department of the Terminal, shall retain their seniority."

"14 (b): Should an employee holding an official or supervisory position be displaced through no fault of his own, or holding an official position with his organization return to the service, such employee shall have the right to exercise displacement on the district or division where he holds seniority rights."

It is conceded the employee, Yale S. Thomas, retained his seniority rights under Rule 11 (f). The question for decision is, Did the employee acquire the right to exercise displacement under 14 (b) upon being displaced from his position of Second Trick Yardmaster at SS "B"—G. C. T.?

The Employees contend the claim should be denied because:

1. Thomas was improperly displaced as Yardmaster.
2. He did not exhaust his rights under the Yardmasters' Agreement, and was not displaced through "no fault of his own" within the meaning of Rule 14 (b), and

3. He did not hold an official or supervisory position within the purview of the rule.

I

The displacement of Thomas was occasioned by the resignation of the General Yardmaster on account of ill health and his exercise of displacement under Rule 7 (d) of the Yardmasters' Agreement, as modified by a so-called "liberal interpretation" agreed upon by the parties which liberalized the rule and permitted yardmasters who relinquished their positions because of ill health to exercise displacement rights. Rules 7 (d) and 8 (d) of the Yardmasters' Agreement pertain respectively to seniority and displacement rights. The Employees question the legality of the exercise of displacement by the General Yardmaster under Rule 7 (d) as amended.

The Yardmaster's Organization is not involved in this suit and the Agreement between the Carrier and Railroad Yardmasters of North America is not before the Board for interpretation.

It appears the parties to the Agreement are in full accord about Rule 7 (d) as amended and the conclusion of the Board must be and is that Thomas was properly displaced under the Yardmasters' Agreement.

II

Rule 14 (b) states an employe shall have displacement rights when "displaced through no fault of his own." The language is plain and unambiguous. Thomas was displaced through no fault of his own when the General Yardmaster resigned and exercised displacement and at that time the right of Thomas to displacement under the rule accrued.

The Employees' proposition is that the rule should be construed to require the employe, if displaced, to exhaust his seniority rights under the Yardmasters' Agreement as a condition precedent to the exercise of displacement under O. R. T. The Division finds no warrant in the record for reading this additional requirement into the rule.

But if it be conceded his displacement from the Yardmaster's position did not at once give Thomas the right to exercise displacement under Rule 14 (b) and that in addition thereto, to avoid fault, he was required to exhaust his seniority rights under the Agreement, it appears that he substantially complied with this additional requirement.

At the time he was displaced Thomas was the youngest yardmaster and unable to exercise displacement rights. Immediately upon receipt of notice that he would be displaced he notified the Chief Signalman that he exercised his right to displace under the O. R. T. Agreement.

The resignation of the General Yardmaster caused a vacancy in the position of relief yardmaster at Mott Haven Yard and soon after the Organization denied him displacement rights on the ground that he had not exhausted his seniority rights under the Yardmasters' Agreement, Thomas, to preserve his rights under the Yardmasters' Agreement, submitted a bid for the Mott Haven position, which was awarded him.

The Employees do not seem to claim that Thomas could have done anything more to protect his seniority rights under the Yardmasters' Agreement. Their proposition that he was not displaced "through no fault of his own" rests on the fact that he concluded not to accept the Mott Haven position because of the estimated time—three months—it would take him to qualify for the position and the expense of qualifying on his own time. The fact that he was not qualified justified his decision not to accept the position and to return to employment under the O. R. T. Agreement.

However, as above indicated, it is the opinion of the Division that when Thomas was displaced from the yardmaster position, to which he had been

advanced, his right to displacement arose under 14 (b) and the exhaustion of his seniority rights under the Yardmasters' Agreement was not a condition precedent to the exercise of the right.

III

The Employees contend Thomas was not an employe holding an official or supervisory position within the meaning of Rule 14 (b).

It is conceded that Thomas while holding the position of yardmaster was a subordinate official under regulations of the Interstate Commerce Commission designating yardmasters as subordinate officials under Title 3 of the Transportation Act of 1920.

The Division is of the opinion that a subordinate official is an official of the Carrier; that the word "official" in 14 (b) includes subordinate officials and that the Rule cannot reasonably be construed as including only officials other than subordinate officials. This conclusion of the Board is supported by a like construction given Rule 28 (b) of the New York Central East—Telegraphers' Agreement, which rule is identical with 14 (b).

It appears that the Organization's General Chairman in the two districts negotiated both rules and that in several instances telegraphers promoted to yardmasters were permitted to displace under the New York Central East—Telegraphers' Agreement. The Board concludes that Thomas, as yardmaster, held an official or supervisory position when displaced.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Yale S. Thomas shall be permitted to exercise displacement in the telegraphers' ranks.

AWARD

That Yale S. Thomas shall be permitted to exercise displacement in the telegraphers' ranks.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of January, 1942.