Award No. 3388

Docket No. CL-3541

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that the Carrier violated the agreement:

(1) When on October 29, 1945 it allowed Yard Clerk G. P. Weldon to exercise displacement rights on yard clerk position at Compton Avenue over Yard Clerk Richard M. Gaffney after the time for displacement rights to him had expired.

(2) That Yard Clerk Richard M. Gaffney be restored to his position as yard clerk at Compton Avenue and be paid any additional compensation which may have accrued to the position during his absence, over and above compensation paid to Mr. Gaffney since October 29, 1945.

EMPLOYES' STATEMENT OF FACTS: Mr. George P. Weldon was displaced October 18, 1945 by Yard Clerk A. G. Hausman, a senior employe properly entitled to exercise displacement rights. Yard Clerk Weldon, being placed on position of Yard Clerk at General Motors, while that position was advertised for bid on Bulletin No. 97, preferred not to exercise displacement rights, but to bid on the position he was then holding temporarily. In doing so, he failed to comply with the provisions of Rule 11 of our Agreement, in that he failed to give a copy of his bid to the Local Chairman of his district. The Carrier awarded the position covered by Bulletin No. 97 to Yard Clerk Weldon as the senior bidder on Bulletin No. 98 dated October 27, 1945, copy of which is submitted as Employes Exhibit "A".

When copy of Bulletin No. 98 was received by Yard Clerk D. W. Smith, Local Chairman of District 35 on Oct. 29, 1945, he protested the award as illegal inasmuch as he had not received a copy of Yard Clerk Weldon's bid, and on being advised of this protest, Yard Clerk Weldon on that date, Oct. 29, 1945, after his ten days had expired, announced his intention to displace Yard Clerk Gaffney at Compton Avenue.

As a result of Local Chairman Smith's protest of the award made in Bulletin No. 98, Bulletin No. 99, dated Oct. 31, 1945, was issued awarding position advertised in Bulletin No. 97 to the legal senior bidder, Stephan J. Barth, and copy of this Bulletin is submitted as Employes Exhibit "B".

The Carrier's action in allowing Yard Clerk Weldon to exercise displacement rights after the ten day period had expired was protested and copy of

and, while there are no written records to confirm, the train of events substantiates their recollections. The burden of proof to show that Rule 17 was violated is upon the Employes and they have not carried that burden because of their failure to present indisputable evidence of the violations, relying upon their recollections of what transpired. For that reason, the claim is without merit and should be denied.

In addition, there is another angle that seems to have been entirely overlooked by the organization, and that is the fact that Weldan bid on and was assigned to the position at the General Motors plant on October 27, 1945, Exhibit B, well within the ten-day period after his displacement on the Central Belt job October 18. Having been properly awarded an advertised position, the provisions of Rule 17 were no longer applicable to him as he ceased to be a displaced employe. The fact that it was later determined that he had bid in the job illegally did not reinstitute the provisions of the rule so far as the exercise of his further rights under the contract was concerned. In other words, he had ten days from the date he was removed from the General Motors position, which was on October 31, to displace some other employe his junior. There can be no question about Weldon displacing Gaffney within ten days from that date as he did so on November 1. Even if we were to admit Clerk Weldon did fail to exercise his seniority within ten days, which we do not, the fact that he was properly awarded a position by bulletin on October 27, 1946, less than ten days after being displaced, made it unnecessary for him to exercise seniority.

In our Position we have established the following facts:

1. The Employes have presented no indisputable evidence that Clerk Weldon did not exercise seniority within ten days from October 18, 1946.

2. He was awarded an advertised position on October 27, 1946, thereby eliminating the application of Rule 17 insofar as it concerns his displacement on October 18.

As a result, there is no basis whatever on which a decision favorable to their contention could be reached.

OPINION OF BOARD: Based upon all of the facts and circumstances of this particular case, the Board is not disposed to disturb the action of the carrier.

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 Employes involved in this dispute are respectively carrier and employes 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 the action of the Carrier will not be disturbed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of January, 1947.