

Award No. 5474

Docket No. TE-5540

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI-ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Illinois Railroad that:

(1) The Carrier violated the agreement in effect between the parties to this dispute when it refused to pay W. C. Barton eight (8) hours at pro rata rate for time lost checking bulletined position Ste. Genevieve, Missouri, May 4, 1949;

(2) That Agent W. C. Barton, Ste. Genevieve, Missouri, now be paid a day's pay of eight (8) hours' compensation account transferring accounts at Ste. Genevieve, Missouri, May 4, 1949, in line with the agreement.

EMPLOYES' STATEMENT OF FACTS: Rule 19 (b) of the prevailing agreement between the parties provides:

"Regular assigned employees transferred by order of the company, employees transferred by order of the company to accept a bulletined position, employees displaced in force reduction who may be obliged to lose time incident to being checked out or in of position from and to which transferred, and employees displaced in force reductions who may be obliged to lose time incident to transfer from one position to another account Hours of Service Act, will be paid a maximum of eight hours each calendar day for time lost in transferring from one station or position to another station or position, except they will not be paid for such time as they may lose of their own accord."

Claimant Barton, while regularly assigned as agent-yardmaster at Salem, Illinois, made application for bulletined vacancy existing at Ste. Genevieve, Missouri. Mr. Barton was the senior applicant and this resulted in the following notice being issued by the Carrier:

"MISSOURI-ILLINOIS RAILROAD (West of River)

Poplar Bluff, Missouri.
April 24, 1949.

Effective at once, Mr. W. C. Barton is appointed as Agent Ste. Genevieve, Missouri, vice C. B. Acuff, retired.

C. E. Cudgell,
Master of Trains & Track.

Approved: H. A. Israel, Superintendent."

employee and it is not an order in the meaning of Rule 9 (b). Furthermore, it is not entirely at the convenience of the Carrier; it must be arranged within ten days after receipt of applications from Local Chairman as prescribed in Rule 14 (a). Certainly there can be no reasonable basis for saying that these arrangements for transfer of station accounts constitute an order of the company for the agent to transfer from one station to another when the Carrier is making those arrangements only because it is required to do so as a result of the employee's voluntary action in making the move.

It is the position of the Carrier that this claim is not supported by the Agreement and has no merit on a basis of equity. We have shown how the Carrier is obliged to incur certain costs to transfer stations from one employee to another in permitting them to secure the advantages of their seniority. To us it is a strange theory of Agreement application to undertake to also impose upon the Carrier a penalty in the form of duplicate payment for the same day's work because it grants the employee the privilege of bettering his condition. Penalties are usually assessed for denials of privileges and rights or the imposition of undesirable conditions—not for giving an employee a better job. Seniority belongs to the employee; it is of no particular concern to the Carrier. The generally accepted rule is that an employee will exercise his seniority rights without cost to the Carrier. There is nothing in the Agreement involved in this dispute that requires the Carrier to assume any loss encountered by the claimant as a result of his voluntary exercise of seniority rights.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant bid in and was appointed to the position of Agent at Ste. Genevieve, Missouri. Carrier arranged for its auditors to check him out of his former position at Salem, Illinois, on May 2, 1949, which was done. Claimant advised that he would be ready for service at Ste. Genevieve on May 4, 1949, he using May 3, 1949, for his own purposes. Claimant was not paid for May 4, 1949, and this claim is for that loss of pay.

The controlling portion of the applicable rule provides:

" * * * employees transferred by order of the company to accept a bulletined position * * * will be paid a maximum of eight hours each calendar day for time lost in transferring from one station or position to another station or position, except they will not be paid for such time as they may lose of their own accord."
Rule 19 (b), current agreement.

The claim is clearly valid under this rule. The contention of the Carrier that claimant's transfer to Ste. Genevieve was voluntary and not by order of the company has no merit. While the transfer may have resulted from a voluntary bid for the new position, it was done in the exercise of a contract right which became effective only upon the assignment being made by the Carrier. Such an assignment to the position is "by order of the company" within the meaning of Rule 19 (b).

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 Employees involved in this dispute are respectively Carrier and Employees 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

The Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of September, 1951.

DISSENT TO AWARD NO. 5474, DOCKET NO. TE-5540

The majority, after agreeing that the transfer "may have resulted from a voluntary bid for a new position", then fallaciously decides that claimant was transferred "by order of the company". Claimant was not transferred "by order of the company" but was transferred to the new position because the rules of the Agreement gave to the claimant the right to be transferred within a specified time.

We dissent.

(s) J. E. Kemp
(s) A. H. Jones
(s) C. P. Dugan
(s) R. H. Allison
(s) R. M. Butler