Award No. 6353
Docket No. CL-6446

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

A. The Carrier violated the rules of the current Clerks' Agreement when they failed and refused to recognize the seniority rights of Train Mail Clerk R. Arnold when he requested to be used in extra service in the filling of a vacancy due to the absence of a regular assigned Train Mail Clerk, Chicago to Evansville on Train No. 1 and return on Train No. 2 on October 14 and 15, 1950; and:

B. That Mr. Arnold be paid wage loss sustained, i.e., wage of Train Mail Clerk for one round trip Chicago to Evansville, October 14-15, 1950.

EMPLOYES STATEMENT OF FACTS: Carrier was given advance information that one of their regular assigned Train Mail Clerks was going to be absent from duty on October 14 and 15, 1950. Train Mail Clerk Arnold, who completed his round trip at approximately 7:50 P.M. on October 13, informed the second trick Foreman in charge, Mr. D. Wells, that he was available for this service as he could stay in Chicago that night and would be on hand at reporting time next day to make this round trip, which he could make and would also be available for his next regular assigned round trip.

He was advised by Foreman Wells that the arrangements had been made to protect this service; that the General Agent; Mail, Baggage and Express Traffic, had notified him, Wells, to make the round trip himself. Clerk Arnold was thereby denied the right to protect this unassigned service due to the vacancy.

Clerk Arnold thereupon, at approximately 7:50 P.M. on October 13th, notified the Foreman in charge that he would claim the round trip because he was available for the service, had requested same more than twelve (12) hours in advance of the beginning of the round trip, and was more than sixteen (16) months senior in service to D. Wells in Class I seniority in the District.

General Agent Lewis' denial of our claim (Employes' Exhibit No. 1-A and 1-D) was appealed to Mr. Morgan, Manager of Personnel, November 11,

1951

Date	Name	Occupation	Trains
Mar. 6	G. Worthem, Sr.	Foreman (M.H.)	1 & 6
May 16	P. Metro	Train Mail Clerk	1 & 6
May 26, 29 & 30	Franklin	Mail Handler	1, 2 & 6
May 16 & 17	G. Worthem, Sr.	Foreman (M.H.)	1 & 2
June 6	G. Worthem, Sr.	Foreman (M.H.)	1 & 6
July 25	Franklin	Mail Handler	1 & 6
Sept. 24 & 25	Franklin	Mail Handler	1 & 2
Sept. 28	Wells	Mail Handler	1 & 6
Oct. 11 & 12	G. Worthem, Jr.	Train Mail Clerk	1 & 2
Nov. 2	G. Wedgewood	Train Mail Clerk	1 & 6
Nov. 5 & 6	Franklin	Mail Handler	1 & 2
1952			
Jan. 5 & 6	Franklin	Mail Handler	1 & 2
Jan. 24 & 25	Pilcavage	Mail Handler	1 & 2
Mar. 15 & 16	R. Arnold	Train Mail Clerk	1 & 2
April 9	Brauninger	Train Mail Clerk	1 & 6
Sept. 22	G. Worthem, Sr.	Foreman (M.H.)	1 & 6

From the above, there can be no doubt as to the manner in which these employes have been used in the past. Platform Mail Handlers or Foremen have at all times filled vacancies in train mail service. The few isolated instances where it is shown that train mail clerks were used were occasioned because a mail platform employe was not available to fill the vacancy.

In view of the interpretation heretofore placed on the agreement and the practice of many years' standing, as indicated by the record herein, Carrier submits this claim is without merit and should be denied.

Carrier affirmatively states that all data contained herein has been handled with employes' representative.

(Exhibits not reproduced).

OPINION OF BOARD: We are here concerned with the claim of one R. Arnold for reimbursement of wage loss to the extent of one round trip Chicago to Evansville, account of Respondent's failure to use him (Arnold) to fill vacancy as Train Mail Clerk; which failure, it is alleged, is in contravention of the effective Agreement.

The record here indicates that the vacancy in question was on a position which departed Chicago destination Evansville, on October 14, 1950 and made the return trip, Evansville to Chicago, on the following day, that is, October 15, 1950. The Claimant here had completed his assignment, namely a round-trip on the same run at 7:50 P. M. on October 13, 1950 and his next regular run left at 7:25 A.M. on October 16, 1950.

The record further shows that Claimant made request to fill vacancy of October 14, 1950 some twelve hours prior to departure time of said run, and further, that at such departure time Claimant would have had sixteen hours of rest.

Respondent gave the vacant assignment to one Wells, a Platform E-

The parties agree that Claimant was possessed of more seniority than Platform Foreman Wells, and that both were Group 1 employes working in the same seniority district.

The Organization asserts the provisions of Rule 11 give Claimant, as senior employe in Group 1, the prior right or preference to vacancies in regular assigned or extra road service. Rule 11 reads as follows:

"EXTRA SERVICE

"The senior Group 1 employes working in District 16 will be given preference to vacancies in regular assigned or extra road service. It is understood there will be no penalty payments involved account holding such employes off their regular assignment when used in road service, nor account used in road service after having worked a day on their regular assignment."

Respondent here takes the position that the above rule is applicable only to those Group 1 employes who work on the platform, and all vacancies in regularly assigned or extra road service are available only to those of Group 1 who are platform employes.

Rule 11 makes no distinction between platform employes and road service employes. Both road service employes and platform employes are included in Group 1.

The record indicates that while both platform and road service employes have in the past filled vacancies in regular and extra road assignments there is no showing that such assignments are the exclusive property of platform employes. To the contrary, there is every indication that such vacancies or extra assignments were filled in strict accordance with seniority among all Group 1 employes.

The settlement on the property cited by the Respondent does not sustain the contention of the Respondent that such work belongs exclusively to platform employes. Therein a claim was paid to a senior platform employe who complained that a junior train mail employe had been given an assignment contrary to the applicable rule. In allowing this claim Respondent in effect honored and followed strict seniority.

Vacancies in regular assigned or extra road service belong to neither train mail employes or platform employes, to the exclusion of the other. Both train mail employes and platform employes are component members of Group 1.

Within the clear meaning of Rule 11, preference to any vacancies in either regularly assigned or extra road service should be given to the senior Group 1 employes in the district, irrespective of whether or not he then holds assignment as a train mail employe or a platform employe.

This claim is meritorious.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of September, 1953.