Award No. 6707
Docket No. TE-6746

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Central Railroad of New Jersey, that:

(1) The Carrier violated the provisions of the agreement between the parties when it permitted W. T. Parker to improperly displace W. J. Hart, Jr., at Long Branch, New Jersey, September 5, 1952; and

(2) In consequence of this violation the Carrier shall be required to restore W. J. Hart to his former position at Long Branch, New Jersey; and

(3) Pay W. J. Hart for all wage loss as well as payments as provided in Article 22 during his absence from Long Branch Station. In addition he shall be paid at the rate of time and one-half for all rest days at Long Branch that he has been required to work elsewhere, also pay at the pro rata rate for being required to suspend work on the rest days of the position to which he has been assigned since September 15, 1952.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing date of June 15, 1944 is in effect between the parties, hereinafter referred to as the Telegraphers Agreement.

At the time of this claim W. J. Hart was regularly assigned to the permanent position of Assistant Ticket Agent at Long Branch, New Jersey, on the New York and Long Branch Seniority District No. 4, hours 1:10 P. M. to 10:10 P. M., rest days Thursday and Friday. His seniority date on the roster is January 1, 1951. He was assigned to the position of Assistant Ticket Agent at Long Branch by the Carrier on June 19, 1951, and worked that position continuously until the Carrier permitted W .T. Parker to displace him from this position, September 15, 1952.

W. T. Parker, who has seniority date of September 24, 1950, was displaced from the permanent position of Assistant Agent-Operator at Allenhurst, New Jersey, on June 17, 1952. Following this displacement he took three days vacation and upon return therefrom advised the Carrier that he did not care to make a displacement of any junior employe, but that he wished to be assigned to the extra list and perform extra work.

During discussions on the property, The Organization made mention of an alleged conversation between Mr. Parker and the Chief Dispatcher in which Mr. Parker is charged with having stated that he would not displace on any position but that he would "take extra work".

To avoid allegations such as this conversation and the like, this Management and the Organization carefully required that the exercise of displacement rights should be made **in writing.** (See Rule 12(a)). If this alleged conversation took place, and if it was to the effect referred to, it would, under the rules, be subject to Mr. Parker's changing his mind during the remaining period of his 5 days. In order, therefore, for an employe to elect to forfeit his displacement rights before the expiration of the 5-day period it would be necessary for him to make such an election in writing, or permit the 5-day period to expire without having made written displacement. See Rule 12(e) which reads as follows:

> "Employes who do not have sufficient seniority to make a displacement or who forfeit their displacement rights, as provided in Article 12(a), will automatically revert to the status of available extra or furloughed employes."

As Mr. Parker did not make an election in writing to work extra, and as he was assigned to a temporary vacancy before the expiration of his 5-day period, he did not waive his full displacement rights and therefore his displacement of claimant on September 14th was proper.

As the Carrier's concern in this matter is only that its positions be filled by capable employes, and that seniority as provided by the rules be properly protected, there is no particular benefit to be gained by the Carrier involved in this issue. Assuming that this Board were to feel that for some reason not now apparent to this Carrier that claimant was improperly displaced, the penalty sought to be placed upon this Carrier is entirely unmerited.

If the claimant improperly suffered a monetary loss occasioned by a change in rate or actual personal expenses by this displacement—and Carrier denies that this displacement was improper—a claim for recovery to that extent might be proper, but to claim time and one-half for working Thursday and Friday which were the Rest Days of the position from which he was displaced, and to claim pay at pro rata rates for Tuesday and Wednesday, days he did not work because they were the assigned Rest Days of the position on which he subsequently displaced, is not only pyramiding of claims which has been rejected many times by this Board, but is also an unconscionable penalty which is not justified by this case.

Carrier contends that for the reasons stated above there has been no violation of any rule of the agreement and the claim should, therefore, be denied in its entirety.

The Carrier affirmatively states that all data contained herein has been presented to the employes representative.

(Exhibits not reproduced.)

OPINION OF BOARD: W. T. Parker was properly displaced from his position at Allenhurst, N. J., by a senior employe on June 27, 1952. Under Rule 12(a) he was given 5 days to exercise displacement rights in writing. Failing, the rule provided, that the displacement rights would be forfeited. Within the period, Parker applied for and received a temporary assignment which terminated on September 14, 1952. On September 15th the Carrier permitted Parker to exercise displacement rights against claimant, Hart, on a position at Long Branch. Parker's seniority date was 9-24-50 and that of claimant, Hart, 1-1-51.

Statements are made that Parker orally advised the Chief Dispatcher that he would take the extra list. We agree with Carrier that the Agreement

requires matters dealing with displacement rights be evidenced in writing. Expression is made that the period provided for the exercise of displacement rights may be tolled by intervening vacation period. We find no support for this assertion in Rule 12 (a) which is unconditional.

Carrier's case rests upon a tolling of the displacement period (5 days) by an intervening assignment to fill a temporary vacancy. Again we say Rule 12 (a) is unconditional and having operated to forfeit the displacement rights of Parker through his failure to displace, there is nothing in the Rules which revives or restores the same.

But, Carrier states under Rule 17 as Parker had no former position to go back to on the termination of the temporary vacancy, he reverted back to his former status which was that of having full displacement rights. Rule 17 provides, in part, that an employe released from a temporary position may exercise displacement rights as provided in Article 12 (c). But Article 12 (c) is of no solace to Parker. It gives him a right to displace any junior employe who had been assigned by bulletin during his absence. Claimant Hart was non-such. Hart had held the position at Long Beach on a permanent basis before Parker was displaced on June 27.

The second part of Rule 17 has no application because, Parker had no position of his own when he took the temporary vacancy. It is the fact of holding a position and not the once existing right to displace upon the position which governs. See implications of Rule 12 (d).

We find that Rule 12 (e) determines Parker's status, he being one who has forfeited his displacement rights and thereunder he automatically reverted to the status of an available extra or furloughed employe. Any seeming inequity under the circumstances of this case must be corrected by negotiations and not Board dictate.

The within dispute arose over an honest difference of opinion concerning rule meaning. Carrier's actions, it must be recognized, were in the interests of preserving the over-all seniority rights of its employes. There was not present here carrier-coercion to perform service outside of assignment or on rest days within the intent of Articles 22 and 21 (m) hence the penalty requested under these rules will be denied. Claimant shall be made whole and compensated for all wage loss suffered.

FINDINGS: The Third Division of the Adjustment Bord, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Agreement was violated.

AWARD

Claims (1) and (2) sustained. Claim (3) sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 9th day of July, 1954.