

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement when it disallowed Franklin W. Burans his displacement rights on a position held by Joseph Lewicki, in the Milk, Mail and Baggage Department at Hoboken, N. J., effective September 29, 1952, and as a result of the Carrier's action as described herein, Mr. Burans shall be reimbursed for all monetary loss sustained, retroactive to September 29, 1952.

EMPLOYEES' STATEMENT OF FACTS: The Claimant entered the service of the Carrier under the terms of the Clerks' Agreement on October 31, 1938 and is so recorded on the seniority roster embracing employees in the Yard Department at Hoboken, New Jersey. This Department—from a managerial viewpoint—is identified as the Operating Department. He continued his employment within the confines of said seniority district as a regularly assigned employee, up to October 5, 1942, at which time he entered the U. S. Navy. On December 12, 1945, he was discharged from Military Service and within the prescribed time limit he properly returned to service under the terms of the Clerks' Agreement, by exercising his seniority right to a regularly assigned position in said Operating Department.

As a result of a mutual agreement having been reached between the parties to this dispute, the Claimant was granted a Leave of Absence, effective September 23, 1947, to attend Rutgers University under the G. I. Bill of Rights and this leave was extended by mutual agreement, from year to year and terminated on September 23, 1952. The time elements involved in this Leave of Absence are not in dispute.

The aforementioned Leave of Absence contained, among others, the following relevant features:

- "5. **Understanding of Employee:** It is understood that leave of absence is granted specifically for education purposes. If Labor and Management accede to my request, understand I will not be permitted to return during vacation periods and exercise displacement rights. However, I will be permitted to work the extra list or any vacation relief or extra assignment, provided my qualifications so warrant.

from school. Moreover, Mr. Craddock, as Division Superintendent, could not, within the scope of his power, grant such permission.

In instances of this kind, the Carrier has made it very clear to the Clerks' Negotiating Committee that it will **only** permit displacements in the seniority district in which an employe has seniority rights, which is in accordance with the practice on this property.

There is no rule, precedent, or practice which would support the Employes in this case. The claim is without merit and should be denied.

All data in support of the Carrier's position have been made known to the Employes on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: On September 23, 1952, Claimant sought to displace Joseph J. Lewicki from his assigned position upon his return to service after a leave of absence. The Organization contends that this was a violation of agreement rules and it demands that Claimant be reimbursed for all monetary loss sustained.

There appears to be no dispute on the facts. Claimant held seniority in the Operating Department as of October 31, 1938. On October 5, 1942, he entered the navy and was not discharged therefrom until December 12, 1945. Within the prescribed time thereafter, he exercised his seniority right to a regularly assigned position in the Operating Department. From September 23, 1947 to September 23, 1952, Claimant was on an agreed upon Leave of Absence to attend Rutgers University under the G. I. Bill of Rights. Upon his return to service he sought to displace Lewicki from the latter's position in the Passenger Traffic Department, a department in which Claimant held no seniority. The Carrier refused to permit Claimant to displace Lewicki and the processing of this dispute followed. Lewicki was junior to Claimant in the Operating Department. While Claimant was on leave, Lewicki obtained a position in the Passenger Traffic Department, a department where he had no seniority until January 9, 1951, the day he commenced work. It is this position the Claimant sought by displacement. The controlling rules states in part:

"(a) An employe returning from leave of absence as provided in Rule 43, or when relieved from temporary assignment, official or excepted position, may return to former position providing it has not been abolished, or a senior employe has not exercised displacement rights thereon, or may upon return or within five (5) days thereafter exercise seniority rights on any position bulletined during such absence. * * *." Rule 44, current Agreement.

It will be noted that the right to displace under this rule is limited to the exercise of seniority rights on any position bulletined during the leave of absence. Claimant had no seniority in the Passenger Traffic Department and consequently he had no seniority right to the position held by Lewicki.

The Organization argues that the language of the application for the leave of absence has a controlling effect in the disposition of the present case. We think not. The applicant (Claimant) is bound by the Schedule Agreement by virtue of the following language contained in the application:

"I may either elect to work the extra list or, **if existing rules of the then existing schedule agreement permit**, select a position which has been bulletined during my absence which I am qualified to handle." (Emphasis ours.)

The emphasized portion of the above, clearly limits the displacement right to such rights as are contained in the Schedule Agreement. Conse-

quently, Claimant is limited to the craft and class in which he holds seniority in exercising such rights.

During the argument of this case, our attention was called to Award 7102. In that case, the employe was permitted to return to his former position without regard to seniority under the terms of the applicable rule. In the present case, the Claimant did not return to his former position but sought to exercise seniority rights to a position bulletined during such absence. In Award 7102, seniority played no part in the right of the employe to return to his former position. In the present case his right was limited to positions bulletined during his leave of absence to which his seniority rights applied. The distinctions in the two cases are readily apparent.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the 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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 5th day of August, 1955.