Award No. 7335

Docket No. CL-7509

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

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

1) Carrier violated and continues to violate the Clerks' Rules Agreement when on April 16, 1953 it permitted furloughed employes I. Werth and G. Swanson to displace regularly assigned employes Clare Rogowski and Anna L. Wermes on Janitresses positions at the Passenger Depot, Milwaukee, Wisconsin.

2) Carrier shall return Employes Clare Rogowski and Anna L. Wermes to the positions of Relief Janitress and Janitress, respectively.

3) Employes Clare Rogowski and Anna L. Wermes shall be compensated at the daily rate of their respective positions for each day subsequent to April 15, 1953 that they were not permitted to work their regular assignments.

EMPLOYES' STATEMENT OF FACTS: Employe Clare Rogowski is the regularly assigned Janitress on Position No. 56 at the Passenger Depot in Milwaukee, Wisconsin. Her seniority date in Seniority District No. 23 is July 14, 1951. Her hours of assignment are from 12:00 Midnight to 8:00 A. M. Thursday through Monday. Her days of rest are Tuesday and Wednesday.

Employe Anna L. Wermes is the regularly assigned relief janitress at the Passenger Depot in Milwaukee, Wisconsin. Her seniority date in Seniority District No. 23 is November 12, 1949. Her hours of assignment are 5:00 P. M. to 2:00 A. M. on Monday, 12:00 Midnight to 8:00 A. M. on Wednesday and Thursday, 9:00 A. M. to 5:00 P. M. Saturday and Sunday. Her rest days are Tuesday and Friday.

Employe I. Werth was a regularly assigned trucker at the Milwaukee Freight House No. 7. Her seniority date in Seniority District No. 23 is, Clerical January 16, 1946 and non-clerical September 1, 1944.

Likewise, there is no dispute between the parties about the fact that the positions occupied by employes Werth and Swanson were abolished in accordance with the schedule rules on April 3, 1953. There is no dispute about the fact that employes Werth and Swanson exercised seniority to displace junior employes within 15 days after April 3, 1953.

Upon the abolishment of their positions on April 3, 1953 there was no reason why employes Werth and Swanson should not have been accorded the right, which they had under the provisions of the schedule rules, to exercise their seniority to displace **junior employes** in the **same seniority district.**

Rule 12 (a) gives to each employe the right to exercise seniority when his position is abolished or when he is displaced through the exercise of seniority, in accordance with the provisions of that rule, and there is nothing in the schedule agreement which indicates the employe has that right, in case of abolishment of his position, **only** if he has occupied that position thirty (30) days or more, which the employes are attempting to contend.

Claimants Wermes and Rogowski were displaced by senior employes in accordance with the provisions of the schedule rules and there is no basis for the claim which has been presented in their behalf.

The Carrier respectfully requests that the claim be denied.

All data contained herein has been presented to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Employes Swanson and Werth, failing to exercise their seniority within fifteen (15) days of December 19, 1952, first date for abolishment of their positions as freight house truckers (Group 3), were furloughed, as provided by Rule 12(a), effective January 3, 1953.

The Carrier, finding need for two additional truckers account increase in the volume of L.C.L. tonnage being handled, on March 6, 1953, recalled Swanson and Werth to service as freight house truckers.

Both parties say the recall was in accordance with Rule 12(d), but they differ over whether the vacancy was "temporary" or "permanent". Rule 12(d) covers, but does allow for some difference of application depending upon whether the recall is for extra or other work, and, it seems, that fact should be known, at the time, or before a furloughed employe is notified. Despite the importance one party to the dispute sees in the ultimate finding and conclusion of fact as to whether the vacancy was "temporary" or "permanent", we are not favored with a showing in the docket as to notice or other details about how the recall was accomplished.

The Carrier is content to tell us, that, when Swanson and Werth were recalled to service, they were recalled for what was then considered to be other than "temporary" positions due to an increase in business which required additional help, but, as it turned out, the positions for which they were recalled were not required after April 3, 1953, at which time the positions were abolished.

Since Swanson and Werth worked the positions less than thirty (30) days, the Employes are caused to observe that they, Swanson and Werth, were called to work a "temporary" vacancy, at the conclusion of which they reverted to the furloughed list.

Had Swanson and Werth continued in a furloughed status, basis for the existing dispute would not exist, but, this time, and within fifteen (15) days of April 3, they asserted their seniority to take positions occupied at the time by two junior employes, and Carrier complied by assigning the positions to them.

The Employes urge that the rights asserted by Swanson and Werth can only attach, under the facts and circumstances shown in this docket, in event it

is now found by the Board that they were recalled for and were working a "permanent" assignment on April 3, and, since the positions or vacancies for which they were recalled did not remain in existence for thirty (30) days, they must be considered "temporary" vacancies, citing Rule 9(a) (g) (i), Rule 12(a) (d), and certain letter exhibits of record.

Carrier stands on the proposition, first, that Swanson and Werth were working "assigned" positions (Group 3), within the meaning of the Rules Schedule and points to their abolishment as evidence thereof; and, second, whether the positions were "assigned", or, as the Employes contend, "temporary", the senior employes were only accorded the rights to which they were entitled pursuant to the "Note" to Rule 12(a) which provides, in substance, that where an employe who has no permanent assignment is displaced from a temporary assignment or by abolishment of the temporary assignment, he shall exercise seniority in the same manner as provided in Rule 12(a) concerning displacements, or abolishment of positions, affecting regularly assigned employes.

After considering all argument found in the docket, we have decided the sole issue to be resolved in this dispute is whether or not an employe recalled from furlough for a Group 3 position may, if the position for which recalled is abolished before the expiration of thirty (30) days, displace a junior employe in the same seniority district.

Accordingly, we fail to see where Rule 9(a) (g) (i) has any application to Group 3 positions, beyond that which is acknowledged in Carrier's Exhibit "D" (Carrier's letter dated August 31, 1954), to be a mutual understanding to the effect that Group 3 positions shall be considered "regularly assigned" for the purpose of determing when the occupant is entitled to the "guarantee" as referred to in Rule 15(e) for a "regularly assigned" employe. We do not understand the Employes contend otherwise, but mainly cite the rules and refer to the letter in support of argument that a position of less than thirty (30) days duration is looked upon by them as being a "temporary" assignment.

Neither do we find anything in Employes' Exhibit "A" (Carrier's letter of June 14, 1951), when applied to the facts of record and the contentions of the parties, which is in conflict with clear language of the above quoted "Note". The "Note", without limitation or restriction so far as concerns the present dispute, permits the exercise of seniority by persons having "no permanent assignment" on "abolishment of the temporary assignment".

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 Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 14th day of May, 1956.