

Award No. 10003
Docket No. CL-12210

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

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

PACIFIC ELECTRIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4837) that:

(a) Carrier violated the terms of the Agreement when on June 2, 1959 it dismissed Mr. Genet from its services on the charge that he refused to take on assignment advertised in Notice No. Supt. 42, dated April 28, 1959, Position 15, Relief Clerk.

(b) That the investigation held May 26, 1959 on the charges preferred against Mr. Genet by the Carrier did not afford him a full and fair hearing, as contemplated by agreement rules.

(c) That Mr. G. R. Genet be reinstated to the services of the Pacific Electric Railway Company with his seniority and all other rights unimpaired; and shall be paid for all wage losses sustained as a result of this violation, retroactive to May 13, 1959.

OPINION OF BOARD: The Claimant was employed by Carrier on October 23, 1952 and on April 24, 1959 was an active unassigned extra clerk.

On April 24th the Carrier bulletined several positions in accordance with the provisions of the Collective Bargaining Agreement. In Bulletin No. 41 they posted Position 95 Relief Clerk for which the Claimant bid.

The Carrier also issued Bulletin No. 42 advertising for Seniority choice position 15 for which the Claimant also bid. Both of the bid acceptances were dated April 29th and were sent to the Carrier in the same envelope.

On May 5, 1959 the Claimant was notified of the acceptance of his bid on position 15 for which he had indicated first choice, the same as he had on position 95. Previously the Claimant had been notified on April 30th that his bid on Position 95 was being rejected because he was not qualified.

When Claimant was first notified concerning position 15 he accepted the assignment. About 25 minutes later he called the Chief Clerk and informed him he would not accept the assignment. As a result of his refusal to cover the assignment he was notified under date of May 13, 1959 of suspension from service. He was charged with refusal to take assignment bid and investigation of the charges was held May 26, 1959.

As a result of the evidence adduced at the investigation, it was determined that the charges had been sustained. The Carrier dismissed the Claimant from service as of June 2, 1959. This decision was processed through the various appeal steps and finally referred to this Board for determination.

The applicable provisions of the Agreement read as follows:

"Rule 31. * * * An employe having been assigned after bidding in a bulletined position will be required to accept the assignment."

Rules and Regulations of the Operating Department:

"Rule O. Employes must obey instructions from proper authority in matters pertaining to their respective branches of the services. They must not absent themselves from duty, exchange duties or substitute others in their places without proper authority."

The Claimant's refusal to work position 15 was based on his alleged right to position 95. The Agreement provided a means of recourse to the Claimant if the Company was in error in not assigning him to said position and he should have followed that course. Instead the record amply demonstrates that the Claimant, without any legitimate reason, refused to cover position 15. This being so, the Carrier was justified in its position that the Claimant was insubordinate. Awards 7289, 8179, 8711 among others are controlling here.

While the organization contends that the Claimant was not accorded a fair and impartial hearing, the fact is that at the hearing the Claimant admitted that he had refused to cover assignment 15 and was thus guilty of insubordination by his own admission. There is thus no basis for the contention that the Claimant was denied a fair and impartial trial.

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

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of July, 1961.