Award No. 10167
Docket No. CL-10021

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Walter L. Gray, Referee

PARTIES TO DISPUTE:

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

BROOKLYN EASTERN DISTRICT TERMINAL

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

1. The Carrier violated the provisions of the Clerks' Agreement when it failed to assign the senior qualified employe holding seniority rights within the Scope of the Clerks' Agreement to a position of Checker, and

2. Claimant P. Cameron holding seniority rights in and under the terms of the Clerks' Agreement shall be assigned to and awarded position of Checker as provided for in the Clerks' Agreement, and

3. Claimant P. Cameron whose seniority entitles him to the position, and other affected employes, shall be paid for all monetary losses, starting February 27, 1957, and each day thereafter until the violations are corrected.

EMPLOYES' STATEMENT OF FACTS: There is in effect a Rules Agreement effective April 1, 1938 and revisions effective September 1, 1949 to cover the 40 Hour Week Agreement, governing hours of service and working conditions of Clerks, Chauffeurs, Watchmen, Freight Handlers, etc. The Rules Agreement will be considered a part of this Statement of Facts. Various Rules therefore, may be referred to from time to time, without quoting in full.

This dispute involves the question of whether or not the Carrier complied with the meaning and intent of the Clerks' Agreement when it:

Failed to assign P. Cameron a Chauffeur, having seniority dates of May 23, 1949 as a Group 3 employe and January 22, 1952 as a Group 2 employe, to an advertised position of Checker in Group 2.

The Carrier further maintains that when they had the understanding with the Division Chairman and the Committee on this property as to application of Rule 3(b) that the action was correct and proper and permitted by the following rules in the current agreement which provides for "Representation" and "Mutual Agreements":

RULE 44 — REPRESENTATION

"Where the term 'duly accredited representative' appears in this Agreement, it shall be understood to mean the regular constituted committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and/or the officers of the organization of which the committee is a part."

RULE 48 — MUTUAL AGREEMENTS

"Exceptions to any Rule or Rules in this Agreement may be made only by mutual agreement between the Management and the General Committee".

The Carrier again respectfully points out to the Division that the Carrier finds itself in this position:

1. The Carrier agrees with the Division Chairman and the Committee on this property that a rule be applied in such a manner.

then:

2. The Carrier after agreeing to such application is then told years later that the application is wrong — even though it has been in effect many years and was originally done at the suggestion of the Division Chairman and the Committee.

3. The Carrier dealt with those authorized to handle matters at that time, now it is placed in a position where it is told the action was improper.

If such a condition is approved, it leaves the Carrier in the position where it would be unable to do business, handle claims or grievances, or other matters on this property with the Division Chairman and the Committee.

The Carrier does not believe that anything like this is intended.

It is respectfully submitted that the claim should be denied in all respects.

This claim has been completely handled with employes on this property.

OPINION OF BOARD: This dispute arose between the Brotherhood of Railway and Steamship Clerks et al and the Brooklyn Eastern District Terminal in connection with the construction of the Agreement between said parties. It is the position of the labor members that Rule 3 relating to Seniority and Rule 12 relating to the filling of vacancies was violated by the Carrier.

The Carrier contends there was no violation and that it filled the position in question in exact compliance with the Agreement.

There is a question as to whether P. Cameron, who had Seniority in Group 3 from 5-23-49 and Seniority in Group 2 from 1-22-52, was the one who should have been appointed to the position of checker. We must therefore go to the Agreement and we must be bound by the fact that P. Cameron had seniority almost 2 months in Group 2 ahead of P. Cabri.

We should not attempt to decide the claim of others who are not before the Board and whose exact status we do not know. Therefore we do not consider that part of the claim "other affected employes". See Awards 2125, 4305 and 6290.

We believe that Award No. 4305 properly sets forth a clear view of this part of the claim. "The only claims properly before the Board are those of named parties for specified dates and locations." Such a claim is inordinate. It is too broad and not susceptible of ascertainment.

There are an abundance of awards that sustain this position.

Therefore we must only consider the claim of P. Cameron. There is considerable discussion in the record as to alleged oral understanding in the past.

It is a fundamental rule of contract construction that alleged oral understanding cannot be permitted to vary the terms of the written document. See Award 5057, also 20 American Jurisprudence, page 1100, and Award 2585.

Since P. Cameron definitely had seniority in Group 2 and the position so filed was in Group 2, we must hold that P. Cameron should have been appointed to the position of checker because of his senioritiy in Group 2 classification.

However it must be said by way of comment that the Agreement itself certainly is no work of art and is one that could be clarified if both parties would attempt to rewrite the Agreement so as to eliminate many problems that will continue to arise under this Agreement now in force. This however is not the province of this Board except to show parties to this dispute there is much to be desired in an Agreement that would have some measure of understanding and not be covered in words so vague as to be capable of understanding.

We therefore are of the opinion that P. Cameron should have been appointed to the position of checker by the Carrier and that the Carrier did violate both Rules 3 and 12.

However as to the relief sought by the Petitioner in this instant case for "other affected employes" this part of the claim is denied.

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 Employe involved in this dispute are respectively Carrier and Employe 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 has been violated in part.

AWARD

Claim sustained to the extent indicated in the Opinion and also denied in part as set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1961.