Award No. 11516
Docket No. CL-11177

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

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

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Board of Adjustment on the Minneapolis & St. Louis Railway Company that the Carrier violated the Clerk's Agreement when it unilaterally, thru its letters of March 16, 1956, addressed to Dolores Wentzlaff, C. W. Gardner and Earl A. Sandquist, denied these persons the right to exercise their seniority over employes carried on their seniority rosters.

That the Carrier now rescind its position taken in the letters referred to above and allow the employes involved to exercise their seniority as provided in the Clerk's Agreement and compensate the employes involved for all monetary loss sustained by such unilateral action.

JOINT STATEMENT OF FACTS: Claimants established and presently hold seniority in Seniority District No. 6, General Auditor's Office, with seniority datings as follows:

Claimant	Seniority Dating
C. W. Gardner	September 26, 1929
E. A. Sandquist	June 16, 1930
Dolores Wentzlaff	June 9, 1947

On March 16, 1956, these claimants were affected by force reductions in their Seniority District No. 6 and indicated their desire to displace junior employes in Seniority District No. 8, Machine Operations Department. On March 16, 1956 Carrier denied the claimant's requests to displace junior employes in Seniority District No. 8. Claim was filed with Vice President and Comptroller L. S. Provo by General Chairman W. H. Hardey on behalf of claimants Gardner, Sandquist and Wentzlaff under date of March 21, 1956, as set forth in "Statement of Claim". The claim was denied by Mr. Provo. It was listed for discussion in a series of conferences which commenced on May 4, 1956. The time limit on claims has been waived pending final settlement.

POSITION OF EMPLOYES: There is in evidence, an agreement dated February 1, 1955 which contains Rule 17; "Reducing Forces" and Supplement "D" and "E" which is a memo of Agreement and its interpretations with respect to the establishment of a Machine Accounting Department and the

with his seniority as provided in the schedule rules covering bulletins, assignments and qualifications. Rule 23 of the current schedule, effective February 1, 1955, is applicable in such situations and reads as follows:

> "Employes filing applications for positions bulletined on other seniority districts will, if they possess sufficient fitness and ability, be given preference on a seniority basis over non-employes and/or employes not covered by these rules. This rule shall not be construed to mean that bulletins will be posted in any seniority district except the district where the vacancy occurs."

Supplements "D" and "E" do not provide, and were not intended to provide, for a free flow of employes into the Machine Operations Department, Seniority District No. 8. There are no rules of agreement which so provide. Supplement "D", Rule 17, and the second paragraph of Rule 21, do provide for employes who have transferred from one seniority district to another to return to their former district under certain conditions. One of these conditions is that they "must exhaust their rights in the new seniority district before being permitted to displace junior employes in the old seniority district except as may be mutually agreed between the General Chairman and the proper officer." The reference made to Rule 17 in the last sentence of Paragraph 4 of Supplement "D" is the same as that contained in the second paragraph of Rule 21 of the current schedule (Rule 21 of the current schedule was carried over verbatim from the immediately preceding schedule which was effective September 1, 1942). The inclusion of this phrase in Supplement "D" was, therefore, no concession to management in any way. Employes' statement that "It will be noted nothing in the rules requires employes, other than Machine Accounting Department employes, to exhaust their seniority in other districts before displacing under Rule 17" is not factual since the second paragraph of Rule 21 of the schedule agreement does specifically so provide. Employes Exhibit No. 1 has no bearing on this dispute.

Employes Exhibits Nos. 1, 2, 3, 4 and 5 are not proof or evidence of the meaning or application of Supplement "D". The arrangements made as set forth in these Exhibits were for the purpose of fulfilling the desire of management to protect and provide work insofar as possible for its employes who were or who might be affected by the reorganization of various departments brought about through an expansion of our mechanized accounting procedures.

(Exhibits not reproduced.)

OPINION OF BOARD: This Claim arises due to Carrier's rejection of the respective requests of the individual Claimants to exercise seniority over junior employes in Seniority District No. 8, the "Machine Accounting Department," which was established May 1, 1951.

In 1956 Claimants became displaced due to force reductions in the "General Auditor's Office," Seniority District No. 6. They promptly made application for specified positions in the Machine Accounting Department, alleging they were entitled to these because of their seniority status. Carrier denied the request of each employe on March 16, 1956.

Employes contend grievants had seniority rights in both of the seniority districts; that in a reduction of forces, they could exercise displacement privileges in either.

Carrier alleges that these employes had attained no seniority in District No. 8; that their names had never been carried on the Seniority Roster of that

district; and that they had no more right to displace on Seniority District No. 8 than on any other district in which they had not established seniority. There are more than twenty seniority districts created by the Collective Bargaining Agreement, and, apparently, the Employes do not contend that insofar as other districts are concerned, an employe can displace a junior employe in another seniority district — if the one seeking this right has no seniority in the other district. It seems fair to infer that it is the position of the Organization that this can be done only in reference to Seniority District No. 8.

The Employes' argumentation, which is not devoid of logic, is predicated upon the especial circumstances which existed when said seniority district was created and the rules agreed upon by the parties in reference thereto.

The new department utilized I.B.M. punch card and machine accounting equipment and procedures. It was realized in 1951 that its creation would involve a transfer of work and personnel from other departments of the Carrier — both initially and from time to time in the future. Consequently and with such circumstances in mind, the Parties executed a Memorandum of Agreement, Supplement "D" and also Supplement "E" — the latter of which was designed to clarify Supplement "D". Both of these became part and parcel of the Collective Bargaining Agreement.

These Supplements are quite important — the Employes stating in the Record that they have restricted all arguments to the provisions of Supplements "D" and "E". The wording of said Supplements has been set forth in full in the positions of the parties, and consequently there is no need to repeat it in this opinion.

We have carefully studied these Supplements and the argumentation of the Organization, but we cannot agree that the position of the Employes is correct.

We find and hold:

That at the time this Claim arose Seniority District No. 8 had the same status as any other seniority district established by the Agreement — except that if and when new and additional work was transferred to it, employes in the district from which the work was taken could at that particular time "follow the work" and exercise seniority rights.

That at the time this Claim arose no new and/or additional work was transferred to Seniority District No. 8.

That Carrier is correct in its contention that if work and/or positions are transferred from another seniority district to District No. 8, displacement rights exist only at the time of the transfer.

That it was the intent of the Parties to provide for District No. 8 to attain a distinguishable status equivalent to that of the other seniority districts. In this regard, we note that numbered paragraph 5 of said Supplement "D" provides:

> "When established positions in the new district become vacant, they will be bulletined in the usual manner and assignments made in accordance with the following:

'Employes holding seniority in the new district will have **first preference,** next preference to be given to employes in the district from which the occupant of the position . . . was assigned, after which . . .'" (Emphasis ours.)

While such contractual provision is not completely analogous to the issues herein, we find it helpful in ascertaining the intent of the Parties. If an employe with established seniority rights in District No. 8 is granted first preference to a vacancy arising in that district, it would seem to follow, by similar token, that such an employe could not be displaced from his own position by an employe of another seniority district — absent a clear-cut showing that the exception referred to above was applicable.

The Claim is permeated with complexities; many of the issues are quite debatable; but we conclude that the seniority rights established by the employes in District No. 8 should have been recognized and protected; and that since the Carrier's action was in accordance with our conclusions in this regard, the Claim should be denied.

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 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1963.