

Award No. 12828

Docket No. CL-12572

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 3-F-1, when R. M. Wilt was permitted to displace J. S. Harris from Clerical Position, Symbol No. G-248, Assistant Train Master's Office, Cresson, Pa., Pittsburgh Region, effective August 28, 1959.

(b) J. S. Harris be allowed a day's pay at the rate of this position beginning August 28, 1959, and for each working day until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various rules thereof may be referred to herein from time to time without quoting in full.

There are but two employees of the carrier directly involved in this claim. The claimant, J. S. Harris, was the incumbent of a position of Clerk, Symbol No. G-248, located at the Assistant Train Master's Office, Cresson, Pa., on the carrier's Pittsburgh Region. R. M. Wilt held a position of Yard

ing penalty payments under the Agreement; that, to the contrary, under the Agreement, a claimant would be entitled to no more than his actual monetary loss, if any.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, Subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to them. To grant the claim of the Employees in this case would require the Board to disregard the Agreements between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that no violation of the Agreement occurred by reason of Mr. Wilt's displacement of Mr. Harris from clerical position Symbol G-248 effective August 28, 1959.

Therefore, the Carrier respectfully submits that your Honorable Board deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this case are not in dispute. Briefly, these facts are that employee Wilt had originally been promoted from the clerical ranks to the Yard Master Group and was regularly assigned to a Yard Master position until he was displaced on June 7, 1959. Wilt made known his intention to displace Claimant Harris, his junior in the clerical ranks, from Clerical position G-248 effective June 9, 1959. However, he did not actually exercise seniority to the Clerical position until August 28, 1959. From June 7 to August 27, 1959, he filled various vacation vacancies within the Yard Master group, finally displacing Claimant Harris from his Clerical position on August 28, 1959. It is mutually agreed that if Wilt had exercised his seniority on the 9th of June, as he originally intended, and actually displaced the Claimant Harris, there would have been no dispute.

The issue to be resolved in this case involves a proper interpretation of Rule 3-F-1 of the Agreement, which is quoted below:

"RULE 3-F-1.

An employe possessing seniority under the provisions of this Agreement now filling or hereafter appointed to a position of

Agent, Assistant Agent, Train Dispatcher, Yard Master, or Assistant Yard Master, or any position which, as of April 30, 1938, was not, or is not now subject to the application or exercise of seniority under the provisions of this or any other Agreement in the selection of the person to fill such position, shall retain and continue to accumulate seniority in the district from which appointed and, provided he reports for duty within thirty days after release from such position, he may exercise such seniority in accordance with the provisions of Rule 2-A-7."

Succinctly stated, the main issue to be determined is whether, in accordance with the agreement, the thirty day grace period began on June 9th, when Wilt initially planned to displace the Claimant, or on August 28th, when he was finally released from the vacation vacancies of the Yard Master Group. Great emphasis has been placed on the term "position" by the Organization to the effect that once Wilt had been displaced on June 7th, he no longer held or owned a position, but was placed in the category of an extra or unassigned employee, that from June 7th to August 27th, he was not filling either a permanent or temporary vacancy, but merely a vacation vacancy. They further contend that sometime during the thirty day period, Wilt should have returned to the Clerical assignment for one day, and then returned to his Yard Master assignment. By so doing, they maintain that he would have protected his seniority rights in the Clerical field for another thirty days.

Although Wilt was officially displaced from his Yard Master position on June 7th, by the exercise of his seniority rights within that group, he worked a series of vacation reliefs and as such, was still subject to the Yard Master Agreement. He did not come within the purview of the Clerical Agreement until he was actually released on August 27th.

We do not believe that it was ever intended that an employee was to be subjected to two agreements simultaneously. Wilt was filling one of the excepted positions specifically listed in Article 3-F-1. His only duty to protect his seniority with the Clerical group was to report for duty within thirty days after release from such position of Yard Master, etc. This is precisely what he did. We cannot agree that the term "position" as used in the above cited rule means only a permanent position.

The language appears to us to be clear, precise and unambiguous. The term "position" as used refers to those mentioned, including the one in dispute. There is nothing in the rule that leads us to the conclusion that Wilt was not occupying or filling a position of Yard master, as these words are used in Rule 3-F-1. It is our judgment that he was under the Yard Master Agreement during the questioned period. When he was released on August 27th, he then came within the scope of the Clerical Agreement and his thirty day grace period became effective at this point.

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 Employees involved in this dispute are respectively Carrier and Employees 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 6th day of August 1964.