

Award No. 14014

Docket No. CL-14333

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5402) that:

(1) The Carrier violated the agreement between the Brotherhood and the Carrier effective September 1, 1952 and as supplemented, effective March 23, 1959 when on June 24, 25, 26, 27, 28 and 29, 1962, it refused to permit employe, Mr. John M. Parry, Yard Clerk, to properly exercise displacement rights on an Assistant Freight Crew Dispatcher's position held by junior employe, Mr. Frank Antonelli at Mystic Junction Yard, Somerville, Mass.

(2) The Carrier shall now be required to compensate the aforesaid Mr. John M. Barry at the daily rate of \$20.8224 for the six (6) days (total \$124.9344) he was held-off the Assistant Freight Crew Dispatcher's position.

EMPLOYEES' STATEMENT OF FACTS: Yard Clerk, Mr. John M. Barry, seniority date 12-23-50, had been properly notified that his position of Yard Clerk would be abolished effective at end of duty tour Thursday, June 21, 1962.

His assignment at that time consisted of the following:

Monday — 11 P. M.-7 A. M. — Hump Yard 9, Marking cars.

Tuesday — 11 P. M.-7 A. M. — Hump Yard 8, Checking Yard and Locals.

Wednesday — 11 P. M.-7 A. M. — Hump Yard 8, Checking Yard and Locals.

Thursday — 11:30 P. M.-8:30 A. M. — (1 hr. lunch) Messenger work.

Friday — 11:30 P. M.-8:30 A. M. — (1 hr. lunch) Messenger work.

Rate of Pay — \$20.4384 daily

- (2) The claimant lost no money.
- (3) The carrier's operations cannot rest on the opinion of a local chairman to the effect that seniority prevails regardless of qualifications.
- (4) The record will prove that the Respondent was not arbitrary or capricious.
- (5) The Petitioner has failed in its burden to prove that the claimant was qualified.

Claim is without merit and denial award is requested.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier refused to permit Claimant, a yard clerk, to displace a junior employe on June 24, 1962, in an assistant freight crew dispatcher's position at Mystic Junction Yard, Somerville, Massachusetts, on the ground that he was not qualified to perform the duties of that position. Claimant thereupon posted on the position for six days, and then was permitted to exercise displacement rights.

Where, as here, the applicable Agreement provides that displacements shall be based on seniority, fitness and ability, it is well settled that management has the right to refuse to permit displacement by an employe it considers unqualified, in the absence of an affirmative showing that its determination in that regard is arbitrary or capricious. See Awards 1147, 2692, 12394 and 12994.

While the six days' posting period may be quite long, the record is not sufficient to show that Carrier acted arbitrarily under all the circumstances. Claimant had no prior experience as an assistant freight crew dispatcher, and it appears that the duties of that position had increased in recent years and that the preponderance of Carrier's freight train crew dispatching is handled at Mystic Junction.

The record does not establish that Carrier's refusal to permit displacement rights on the claim dates was arbitrary or capricious, and the claim will 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 10th day of December 1965.

LABOR MEMBER'S DISSENT TO AWARD NO. 14014,
DOCKET CL-14333

The decision in Award 14014 (Docket CL-14333) is similar to that rendered in Award 14013 (Docket CL-14327) and is equally obnoxious, and the dissent registered in Award 14013 applies equally as well to this Award 14014..

C. E. Kief
Labor Member
1-05-66