

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, Referee

PARTIES TO DISPUTE:

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

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5272) that:

(1) Carrier violated the Clerks' Agreement when Clerk A. R. Linse was denied displacement rights to position of A.A.R. Clerk, rate \$19.70 per day, effective July 3, 1961, after denying claimant the right to sit in on that position at no expense to the Carrier, and requiring him to submit to an examination on the A.A.R. Book of Rules entirely from memory, when the incumbent of the position has constant access to said book of Rules when working the position.

(2) Claimant A. R. Linse shall now be compensated at the rate of the A.A.R. Clerk position, \$19.70 per day, for July 3, 4, 5, 6 and 7, 1961 and each work day thereafter until November 1, 1961, when claimant was permitted to exercise displacement rights on another position by mutual agreement.

EMPLOYEES' STATEMENT OF FACTS: Effective June 1, 1961 the Carrier moved its Chief Engineer's Office from Danville to Chicago Heights, Illinois and the incumbent of the Chief Clerk position in that office who desired to remain in Danville notified the Carrier that he would displace Claimant A. R. Linse who held the position of Supervisor's Clerk which was to remain in Danville, as of June 19, 1961. Employees Exhibit 1(A)

Claimant Linse was scheduled for vacation June 19 thru July 2nd inclusive and therefore, notified Mr. D. L. Engel, Superintendent of Mechanical Department and Mr. D. L. Cronkhite, Master Car Builder that he desired to displace on position of A.A.R. Clerk in the Master Car Builder's office and due to his vacation which was regularly scheduled, he would not assume duties until July 3, 1961. Employees Exhibit 1(B)

On June 28, 1961, or four days before Claimant was to assume duties of his selected position and while he was still on vacation, Claimant went to the office of the Master Car Builder with the expectation of sitting in on the A.A.R. Clerk position, at no cost to the carrier, to learn the duties of that position. Master Car Builder Cronkhite informed Claimant he could not sit in on the position until after he had taken an examination to prove he was

quested and if unable to agree and concur, we desire to set a conference date with you to discuss this situation.

Very truly yours,

/s/ M. M. Keerns

General Chairman

cc-Mr. J. Anderson, LC
Mr. D. L. Engel, SMD
Mr. A. Linse, Claimant"

There is in effect between the parties hereto, an agreement identified as Schedule No. 2, effective April 22, 1955.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant A. R. Linse sought to displace on position of A.A.R. Clerk on July 3, 1961 following his vacation. He was informed of the necessity for taking an examination on the A.A.R. Book of Rules, and took that examination, without the aid of the Rule Book, on July 5, 1961. He was notified of his having failed the examination and being denied the position on July 6, 1961, giving rise to the instant grievance. He was later given an opportunity to displace on the relief position titled Dispatcher's Clerk commencing November 1, 1961, thus creating a cut off date to the original claim. On August 24, 1962, he was offered another opportunity to take the A.A.R. Clerk test, this time using the Rule Book. This offer was rejected by the Claimant, who indicated his satisfaction with his new position.

The Organization contends that Claimant had a right under Rule 7 (a) of the parties Agreement to "* * * thirty working days in which to qualify * * *," and that he was denied the "* * * full cooperation of department heads and other employes in * * * (his) efforts to qualify" (Rule 7 [C]) when the Carrier imposed an examination requiring total memorization of a rule book to which he would have had constant access on his position. Additionally, it notes that he was denied the opportunity during his vacation to sit in on the position as a volunteer without compensation, to familiarize himself with the operation.

The Carrier contends that the original test taken by the Claimant was a proper test of his skill and ability; that his failing that examination proved his inability to handle the position; and that the Carrier acted leniently in re-opening his rights to a subsequent displacement, and in offering him an additional opportunity to take the test, under more lenient circumstances. In view of these facts, the Carrier concludes that it met its full obligations under the Agreement, and that the claim should be denied.

There is no question that the position of A.A.R. Clerk is a difficult one, demanding familiarity with the governing Book of Rules. Nor is there any question that Claimant, exercising displacement rights under Rule 7 had the right to thirty working days in which to qualify for that position. Carrier denied the Claimant this right by interposing a written examination, requiring memorization of the Rules, which even it admitted by its later allowance of a second examination using the Rule Book was an excessive requirement for qualification. In view of this and the Carrier's refusal to permit the

Claimant to sit in and observe the operation without cost to it during his vacation, we must conclude that the Carrier acted improperly in interfering with the exercise of Claimant's displacement rights. Accordingly we find that the claim has merit.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June, 1966.