



Award No. 17258

Docket No. CL-17873

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(SUPPLEMENTAL)**

James Robert Jones, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6515) that:

(1) The Carrier violated the Clerks' Agreement, particularly Rules 6 and 31(c) among others, when beginning August 4, 1967 it arbitrarily, refused to permit Mrs. Candace Esperson, a machine operator, promotion from the "Machine Operator's" roster to a clerical position on the "Clerks" seniority roster, both districts, located in the Auditor of Revenue Office, General Office, Boston, Mass.

(2) The Carrier shall now be required to compensate Mrs. Esperson the difference between her rate of pay \$22.376 daily and the position sought of \$23.846 daily from August 4, 1967 to February 26, 1968 when claimant was awarded the position sought including all subsequent increases, holiday credits, fringe benefits, etc.

(3) Carrier shall be required to make Claimant's seniority date on the Clerk's roster retroactive to August 4, 1967, the date on which compensation would accrue to her on said roster if she had been awarded the clerical position sought at that time.

(4) Carrier shall also be required to compensate Claimant for the difference in her rate and the rate of positions to which the junior employee has since been assigned until corrected.

EMPLOYEES' STATEMENT OF FACTS: Claimant occupied a position of machine operator in the Auditor of Revenue Office, General Office, Boston, Mass.

In this Office there are two seniority Rosters, one for clerks and the other for machine operators, the latter until a few years ago, consisted entirely of women.

Since that time Carrier has hired male machine operators whom it has promoted to the clerical roster whenever a vacancy was left unfilled on that roster after all promotions had been awarded.

CARRIER'S STATEMENT OF FACTS: The claimant applied for work with this Carrier as a Machine Operator and after passing tests on various office machines was hired and commenced work as a Machine Operator on September 5, 1961. She established seniority on the Machine Operator's roster as of that date.

On August 2, 1967 she made written application for work as a Clerk. On August 3, 1967 an employee junior to the claimant, made known his desire to fill a Clerk's vacancy in the Clerk's seniority district; and he was assigned to the clerical position on August 4, 1967.

Rule 31(c) of the Agreement between the parties hereto effective September 1, 1952, gives employees preference for employment in other seniority districts over "non-employees and/or employees not covered by these rules."

The Carrier exercised its prerogative and managerial rights in assigning other than the claimant to the existing vacancy in the Clerk's seniority district. The claimant requested a hearing under the provisions of Rule 39 and was afforded such hearing on September 20, 1967. The department head (Mr. F. A. Hyland, Auditor of Revenue) ruled on September 26, 1967 in letter to the claimant, that there had been no violation of Rule 31(c) of the Agreement. Copy of Mr. Hyland's decision is attached hereto as Carrier's Exhibit "A." Mr. Hyland further stated that her seniority gave her prior rights only within her own seniority district as provided by Rule 3(b). Mr. Hyland's decision was subsequently sustained by the undersigned as Chief Carrier Officer to handle such matters under the Railway Labor Act.

On September 25, 1967 the claimant filed a monetary claim retroactive to August 4th, for the difference in earnings for what she had earned as a Machine Operator and what she would have earned had she been assigned to a Clerk's position on August 4th.

On February 26, 1968, when another clerical position was available, the claimant was given this position not under Rule 31(c), but rather based on the Carrier's right and prerogative in offering the claimant the work over other applicants.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant, a machine operator, filed application for consideration for any unfilled clerical vacancies. This application was filed prior to the meeting of the Promotion Committee. Subsequent to the Promotion Committee meeting, the Auditor of Revenue assigned the clerical position to James Lyons. Lyons was junior to Claimant in seniority on the Machine Operator's roster.

Claimant requested a hearing under Rule 39. The hearing was granted and the decision was held against the Claimant's position.

Claimant bases this claim on the following Rules of Agreement:

- Rule 3—SENIORITY DISTRICTS.
- Rule 6—PROMOTION, ASSIGNMENTS AND DISPLACEMENTS.
- Rule 7—PROMOTION COMMITTEES IN GENERAL OFFICES.
- Rule 8—BULLETINED POSITIONS.

**Rule 31—TRANSFERRING WITH THEIR POSITIONS TO
OTHER SENIORITY DISTRICTS OR BRANCHES OF THE
SERVICE.**

It appears to this Board that one central question is whether there is a single seniority district with two rosters or two separate and distinct seniority districts within the office of the Auditor of Revenue.

If there are two seniority districts then Rule 31(c) governs. Rule 31(c) states:

“Employees who apply for employment in seniority districts other than where employed will be given preference on the basis of seniority, fitness and ability over non-employees and/or employees of this provision will make written application to the officer charged not covered by these rules. Employees desiring to avail themselves with the responsibility of bulletining and assigning positions in the seniority district in which they seek employment.”

In this situation, the instant claim could not be sustained. Rule 31(c) provides that employees are to be given preference based on seniority only over non-employees or employees not covered by these rules. Such is not the case here. Lyons is covered by the rules and therefore Claimant would have no standing to object to Carrier's managerial prerogative in selecting Lyons for the position over Claimant.

If, on the other hand, there is one seniority district with two rosters in the office of the Auditor of Revenue, Rule 3 is controlling. That Rule states:

“(a) Seniority districts as now in effect shall remain in effect, unless or until changed by mutual agreement between the Management and the duly accredited representatives of the employees, provided, however, that as soon as possible subsequent to the effective date of this agreement the parties hereto will jointly consider a revision of existing seniority districts and thereafter the districts then in effect will be printed as a supplement to this agreement.

(b) Within the confines of each seniority district, employees have prior rights in accordance with their length of service within the district (fitness and ability being sufficient) to promotion, assignment, displacement and work.”

Clearly Claimant has seniority rights over Lyons and the instant claim would be sustained under Rule 3.

There is evidence to support both sides of this question. Regardless of whether there is one or two seniority districts, Claimant should be compensated. As we have already stated, if there is one seniority district with two rosters within the office of the Auditor of Revenue, Rule 3 applies and Claimant should be upheld.

If there are two seniority districts, Rule 31(c) applies and it requires that applications be submitted in writing by those who desire a position in a seniority district other than their own.

The evidence seems clear that Lyons did not apply in writing. Claimant was one of four machine operators who did apply in writing and Claimant has seniority over the other applicants. Therefore, under Rule 31(c), Claimant would be entitled to recover since Lyons failed to meet one of the written requirements, i.e. application in writing.

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 30th day of June 1969.