



Award Number 17922

Docket Number CL-18321

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6621) that:

1. The Carrier violated the understanding and provisions of the Clerks' Agreement, particularly, the Scope Rule Exception No. 4, Rules 2-A-9, 3-C-1, 6, 7-A1, 7-A-2, 9-A-1, 9-A-2, among others, when it unfairly and unjustly removed the Supervising Operator—Print Shop, Joseph F. Driscoll from his regular assigned position and ordered him, Under Protest, to exercise his seniority to another position effective at the close of business Friday, September 6, 1968.
2. The Carrier shall pay claimant Driscoll, a day's pay at the rate of the Supervising Operator—Print Shop (his regular assigned position) in addition to the position he was forced to displace effective September 9, 1968 and for each day thereafter until the violations are corrected and Supervising Operator Driscoll is reinstated to his regular assigned position.
3. The Carrier shall further pay Clerk Carl Vaccaro, who was illegally displaced September 9, 1968; Clerk Ann D'Andrea; who was illegally displaced October 18, 1968; a day's pay for the regular position they were wrongfully displaced from, in addition to the positions they were forced to displace in violation of the Clerks' Agreement, effective September 6, 1968 and for each day thereafter until the violations are corrected and the affected employees are all reinstated to their regular positions prior to displacement. A list of all other affected employees will be given to the Carrier as soon as all displacements are effected.

EMPLOYEES' STATEMENT OF FACTS: There is in effect a Rules Agreement effective July 1, 1945 and a revised Agreement effective January 1, 1965, which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, as amended, and also with the National Railroad Adjustment Board, covering clerical, other office, station and storehouse employees, between this Carrier and this Brotherhood. The Rules Agreements will be considered a part of this statement of facts. Various Rules and Memorandums therefore shall be referred to from time to time without quoting in full.

Under date of October 23, 1968, Mr. O'Connor wrote Local Chairman Shea denying his claim. A copy of that letter is attached and is identified as "Carrier's Exhibit No. 8."

Under date of December 10, 1968, Mr. Hewson, General Chairman, appealed Mr. O'Connor's denial decision to Carrier's Director of Personnel Relations, A. T. Van Wart. A copy of that letter is attached and is identified as "Carrier's Exhibit No. 9."

Mr. Van Wart replied to the Employees' appeal under date of December 18, 1968, agreeing to discuss the appeal on December 23, 1968. A copy of that letter is attached and is identified as "Carrier's Exhibit No. 10."

Carrier heard the Employees' appeal on December 23, 1968, and on December 26, 1968, Mr. Van Wart wrote the Employees denying the appeal. A copy of that letter is attached and is identified as "Carrier's Exhibit No. 11."

Under date of April 10, 1969, Mr. C. L. Dennis, International President, Brotherhood of Railway, Airline and Steamship Clerks, wrote Mr. S. H. Schulty, Executive Secretary, stating the Organization's intent to submit this dispute to your Honorable Board for adjudication. A copy of that letter is on file with your Board.

II

The record indicated that Claimant Driscoll was assigned as "Supervisor-Print Shop" effective February 28, 1962 (see "Carrier's Exhibit No. 12" attached, Service Record, J. F. Driscoll). The record further indicates that Claimant was made Supervising Operator-Print Shop effective January 25, 1965. On January 28, 1965 the POSITION of Supervising Operator-Print Shop was placed under Exception 4 of the Working Agreement (see "Carrier's Exhibit No. 1").

Claimant Driscoll continued as Supervising Operator-Print Shop until the close of business September 6, 1968, having been advised by Administrator-Office Services O'Connor that he was being replaced in that position at that date. (See "Carrier's Exhibit No. 3")

The Employees have filed claim alleging violation of Exception 4, Rules 2-A-9, 3-C-1, 6, 7-A-1, 7-A-2, and others, when, effective with the close of business September 6, 1968, Claimant Driscoll was removed from the position of Supervising Operator-Print Shop. The employees further demand that Claimant Driscoll be restored to the position of Supervising Operator-Print Shop and paid at the rate of that position for each day he is not allowed to hold the position. Finally the employees demand that certain named clerks (with others to be named subsequently) be paid at the rate of the job they were displaced from due to Driscoll's exercise of his displacement rights for each day they are not allowed to hold that job. In short, the employees are urging the "passed on effect" of Driscoll's demotion be applied to employees junior to him (Driscoll) who were displaced as a result of Driscoll's exercise of displacement rights. The employees also demand that Driscoll be paid at the rate applicable to Supervising Operator-Print Shop in addition to the pay he now receives.

(Exhibits Not Reproduced)

OPINION OF BOARD: At the time of the occurrence giving rise to the claim herein the Claimant occupied position of Supervising Operator-Print Shop, which position was, by agreement, exempt from Rules 2-A-1, 2-A-2, 2-A-3, and 3-C-1 of the Agreement. Such rules are commonly referred to as

the promotion, assignment and displacement rules, and positions that are exempt from certain rules are generally referred to as excepted positions. The issue before the Board is whether the Carrier acted in violation of the Agreement when it removed Claimant from the position occupied by him effective with the close of business September 6, 1968.

We agree with the Carrier that as the right of selection of the employee to fill the position involved rests with the Carrier, it follows that the right to remove an employee from such position also rests with the Carrier. It has long been recognized by this Board that an employee may be removed from an excepted position without resort to the disciplinary and appeals procedures of the Agreement, but in order to dismiss such an employee from its service as a clerical employee, the provisions of the Agreement must be followed. See Awards 13632, 8426, 7102, 6868, 2941, among others. Based upon these holdings, which we affirm, we find that the Carrier was not in violation of the Agreement in removing Claimant from the position of Supervising Operator—Print Shop, and permitting him to exercise his seniority under the Agreement.

Both parties have referred to our Award 17293 involving the same Agreement. Each dispute must, of course, be decided on the basis of the record before the Board. It is apparent that elements were present in the dispute covered by Award 17293 that are not present herein. For instance, it was found in that case that the Claimant had not been given any reason for removal from the excepted position. In the dispute herein reason was given. In our present dispute also the Carrier has submitted evidence as to the application of Rule 2-A-9, which the Board found lacking in the dispute covered by Award 17293.

Based on the record herein, we do not find that the Agreement was violated, 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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1970.