

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19934  
Docket Number CL-19883

Benjamin Rubenstein, Referee

(Brotherhood of Railway & Steamship Clerks,  
( Freight Handlers, Express & Station Employees

PARTIES TO DISPUTE: (

(Houston Belt and Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7203)  
that:

1. Carrier violated the Clerks' Agreement when it removed Miss Mickey Moffitt from the position of Relief Job No. 528, South Yard, effective Monday, November 14, 1971.

2. Carrier now restore Miss Moffitt to the position of Relief Job No. 528 and compensate her for all wage and other losses sustained account this disqualification.

OPINION OF BOARD: On November 6, 1971, claimant, pursuant to Rule 7, displaced another employee and commenced work on relief position 528, South Yard. One week later, she was removed from that position -- which encompassed two shifts as a chief clerk and three as a route clerk -- upon the assertion by supervision that work as a chief clerk "requires a capacity for delegating work and supervision of the work force that you apparently do not possess."

Rule 7 provides in relevant part:

"(a) Employees covered by these rules shall be in line for promotion. Promotions, assignments, and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail, except, however, that seniority shall not apply to the positions named in paragraph (c) of this rule .....

(b) The word 'sufficient' is intended to more clearly establish the right of the senior employee to bid in a new position or vacancy where two (2) or more employees have adequate fitness and ability."

Rule 16 has this to say about an employee's "Time in Which to Qualify" for a "bulletined position" such as the one presently involved:

"(a) Employees awarded bulletined positions will be allowed thirty (30) days in which to qualify, and, failing, shall retain all their seniority and may displace youngest employee in his group.

"(b) Employees will be given full cooperation of other employees in their efforts to qualify."

The recited instance of claimant's failure properly to delegate or supervise work, if taken most favorably to the carrier shows merely that claimant herself made a visual check of rolling stock movement rather than sending someone else to do it. In view of the testimony that it is not unusual for a chief clerk to perform such visual checks, the most that can be inferred against claimant is that she made a small error of judgment as to which, possibly, counseling would have been appropriate. That such judgmental lapses can be expected to occur is obvious from the mandates of Rule 16 "that employees will be allowed thirty (30) days in which to qualify" on their new jobs and that, during that period, they "will be given full cooperation of other employees in their effort to qualify."

Although one can readily imagine situations in which newly-promoted employees demonstrate conclusively their unsuitability for a particular job very early in the probationary period, such is not the case here. Indeed, the claimant's apparently satisfactory performance as a chief clerk at another of the carrier's yards, coupled with the favorable testimony of her peers and subordinates, impels the conclusion that she would probably have been able to perform all the duties of the job presently in question had she been accorded the full probationary term and the "full cooperation of other employees" required by Rule 16. (See Award #12245 (Dorsey).)

The Board therefore finds that the carrier improperly disqualified the claimant from the position in question and that the disqualification should be expunged from the record.

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.

Award Number 19934  
Docket Number CL-19883

Page 3

A W A R D

The claim is granted in full.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 19934

DOCKET NO. CL-19883

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and Steamship Clerks,  
Freight Handlers, Express and Station Employees

NAME OF CARRIER: Houston Belt and Terminal Railway Company

Upon application of the representatives of the Employees involved in the above Award, that this Division interpret the same in light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

The Act provides as follows:

"The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute. In case a dispute arises involving an interpretation of the award the Board upon requests of either party shall interpret the award in the light of the dispute." (Emphasis ours.)

The claim of Petitioner, which was sustained, requested:

"2. Carrier now restore Miss Moffitt to the position of Relief Job No. 528 and compensate her for all wage and other losses sustained account this disqualification."

---

A dispute has arisen over the meaning and intent of our Award: "The claim is granted in full" when applied to "other losses sustained." The Organization's position on this matter is summarized in the penultimate paragraph of their Interpretation request, reading:

"In summation, the Employees submit to comply with Award 19934 Carrier must place Miss Moffitt on Relief position 528, pay her the difference between that of Relief Job 528 and position worked, compensate her for all overtime earned by junior employees filling vacancies on Route Clerk and Chief Clerk positions, compensate her for mileage allowance of 24 miles per day at the rate allowed other employees and compensate her for 48 minutes each day for travel time at the rate of the Relief position."

The Carrier, in response, argues that they have offered to return Claimant to Relief Position No. 528, and she has declined. They have also offered to pay her the difference between the rate of the job worked and Relief Position No. 523, but she has refused the check. They do not feel that Claimant is entitled to receive "all overtime earned by junior employees filling vacancies" and that there is no agreement provision for mileage allowances and travel time compensation.

We have carefully examined the Organization's request for an Interpretation and the Carrier's response and have noted the arguments made by both. First, we find that inasmuch as Claimant has refused reassignment to Relief Position 528 all liability accruing under our Award No. 19934 against the Carrier ceases as of the date of refusal. Next, we do not interpret our Award as allowing mileage allowances and travel time compensation under the broad scope of "other losses."

With respect to "wage and other losses" as they pertain to what Claimant earned from the position worked and Relief Job No. 528, we do not limit such losses to the difference in the rates of pay of the two positions. We intended in our Award to allow Claimant the difference between the earnings produced on the positions worked and the earnings produced had she properly been assigned to Relief Position No. 528. This difference is to include any overtime, rest day and/or holiday compensation Claimant would have been entitled to receive as the occupant of Relief Position No. 528. For example, if during the period of claim the improperly-assigned occupant of Relief Position No. 528 worked, by virtue of the fact of holding down Relief Position 528, certain rest days, holidays or overtime, then Claimant as the properly-assigned occupant would have been entitled to such work and resulting compensation.

What we intended, in substance, is that Claimant be constructively placed on Relief Position No. 528 during the period of claim and paid the difference between what she earned and what she would have earned had she been properly assigned to the position. However, we did not intend mileage allowances and travel time compensation.

Referee Benjamin Rubenstein, who sat with the Division as a neutral member, when Award No. 19934 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1974.