

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20209
Docket Number CL-20253

Frederick R. **Blackwell**, Referee

(Brotherhood of Railway, **Airline** and **Steamship**
(Clerks, Freight Handlers, **Express** and
(Station **Employees**

PARTIES TO DISPUTE:

[**Pacific Fruit** Express Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood
(**GL-7343**) that:

(a) The **Pacific Fruit Express Company** violated the current **Clerks'** Agreement when it permitted employe Cordon W. Smith to displace employe R. L. **McArthur** from Position R-1 Agent Clerk; and,

(b) The **Pacific Fruit Express Company** shall now be required to compensate Mr. **McArthur** for all earnings made by Mr. Smith on Position R-1 beginning **August 19, 1971** and continuing until the former is placed thereon.

OPINION OF BOARD: The **Employees** construe Rule 9 (e) of the Agreement to provide that "an employe returning from any type of leave absence must, if he desire to displace, do so prior to returning to his regular position. **Once** he returns to his **regular** position **all** displacement rights are forfeited." The Carrier does not contest this construction of the rule, but asserts that a rule violation has not been demonstrated.

Certain facts are not disputed. On **August 12, 1971**, the Claimant was awarded the position of N-1 Clerk, which had been bulletined on August 6 but which was not scheduled to be a working position until August 19. However, **before** Claimant worked the position, the Carrier honored the displacement notice of **Mr. Gordon Smith**, who was senior to Claimant and who was on vacation during the bulletin of **N-1**. Mr. Smith, the incumbent of the position of Chief Clerk, returned from vacation and worked the Chief Clerk position on August 17 and 18, **1971**; he then went to R-1 on August 19, the first day it was scheduled to work.

The issue to be resolved, under the **Employees'** theory, is whether Mr. Smith did in fact work **his** Chief Clerk position before he issued **his displacement** notice in respect to the R-1 position. In initiating the claim on the property, the Claimant asserted that the Smith displacement notice was not issued until August 19, although he had worked on his Chief Clerk position for the two previous days of August 17 and 18. The Carrier's District Agent, in **denying** the claim,

controverted August 19 **as** the date of the displacement notice and established that it had in fact been issued on August 17; in addition, the District Agent asserted that Mr. Smith "returned from his scheduled vacation Tuesday, August 17, as Chief Clerk and immediately displaced" to position Xi-1. **This** latter point **was** the subject of further elaboration in a February 18, 1972 letter by **Carrier's** highest **officer**:

" this is not an ordinary case of an **employee** returning from vacation and going back to his own job and then waking up, so to speak, and **wrongfully** displacing a junior person from a job assigned during his absence. This is rather the exceptional type of case that proves the rule inasmuch **as** the senior **man** returned, saw at once that a job I-1 had been advertised to start two days thereafter, exercised his seniority right immediately to I-1 and stayed on his own job until **N-1** commenced at which time he promptly assumed it. "

In appraising the **foregoing**, **end** the whole record, we find no basis for concluding that **the sequence of Mr.** Smith's actions on August 17 **was** return to work **first** and issuance of displacement notice afterwards. The **Employees'** Submission argues from the conclusion that such sequence did obtain **factually**, but nowhere do they cite **any evidence** to support **or** explain the conclusion. Indeed, except **for** the Claimant's erroneous statement that the displacement notice occurred on August 19, the **Employees** have submitted no information at **all** about the timing of Mr. Smith's displacement notice in relation to his **commencing** work on the Chief Clerk position on August 17. Consequently, for lack of evidence in support of the essential fact, we shall dismiss the **claim**.

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

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The claim is dismissed.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 11th day of April 1974.