

NATIONAL RAILROAD ADJUSTMENT **BOARD**

THIRD DIVISION

Award Number 21067
Docket Number CL-21145

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and **Steamship** Clerks,
(Freight Handlers, Express and Station **Employees**
PARTIES TO DISPUTE: (**Elgin, Joliet** and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7857) that:

(1) The Carrier violated the effective Clerks' Agreement when it refused to permit Clerk Georgia Ward to exercise her displacement rights over a junior employee, without just cause, and thereby deprived her of her seniority rights;

(2) The Carrier shall now be required to compensate Clerk Georgia **Ward** for eight (8) hours' pay at the pro rata rate of Position No. CT. 357, commencing with March 4, 1974 and continuing for each and **every** day thereafter, five days per week, Monday through Friday, that she is denied her right to displace on Position No. GT 357 which is held by a junior employee.

OPINION OF BOARD: On February 28, 1974 Claimant sought to exercise seniority rights to displace a junior employee. On March 1, Carrier rejected her notice because she had allegedly admitted no prior **experience** and total unfamiliarity with the job content. As a result, Claimant was furloughed - and not recalled to service until **March** 11, 1974.

Rule 7 specifies that the exercise of seniority in all instances is subject to **Rules 8** and 16.

"RULE 8

"PROMOTION, ASSIGNMENTS AND DISPLACEMENTS

"Employee covered by these rules shall be in line for promotion. Promotion, assignments and displacements shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

NOTE: The word 'sufficient' is intended to more clearly establish the right of a senior employee to bid in a **new** position or vacancy where two or more **employees** have adequate fitness and ability. An employee shall be considered as having adequate fitness and ability when he has reasonable fitness and ability to **perform** the duties of a position under proper supervision and direction, and need not

have **immediate** fitness and ability resulting from actual pest experience in performing the work incident to a particular position."

"RULE 16

"TIME IN WHICH TO QUALIFY

(a) **Employees** making application for bulletined positions or exercising displacement rights to positions held by junior **employees** will be allowed sixty (60) work days in which to qualify.

(b) When it is definitely **determined**, through hearing, if requested in writing by the employee or his duly accredited **representative**, that the employee **cannot** qualify, he may be removed before the expiration of sixty (60) work days, he shall retain all his seniority rights and may bid on **any** bulletined position but may not displace any regularly assigned employee, except that an employee who fails to qualify on a **temporary** vacancy may **immediately return** to his regular position.

(c) **Employees will** be given full cooperation of department heads and others in their efforts to qualify.

(d) **Employees who** are disqualified under provisions of this **rule** on other than temporary vacancies shall thereafter be considered as furloughed and subject to the provisions of paragraphs (d), (e) and (f) of Rule 19."

In an April 3, 1974 denial of the claim, a Carrier official stated that Claimant lacked prerequisite qualifications and:

"As you **know**, it has been our consistent position for years that a person must be qualified to **assume** the full duties of a position when bumping to that position. Conversely, we recognize that when individuals bid to or are assigned to a position **we are** obligated to train them in the duties of that position."

The same position **was** reaffirmed in the further handling of the **dispute** on the property.

We have eliminated from consideration various speculations and **assertions** which are not based upon items **raised** and considered on the property. Confining ourselves to consideration of matters properly before **us** we have considered the agreement language, the fact that the Claimant was not fully **quali-**

fied to perform the job as of the time she attempted to displace, and the Carrier's stated distinction concerning its obligation.

Our review of the cited Awards fails to resolve the dispute. We have considered the concepts expressed by the various Referees, but, in most **part**, they were not confronted with the precise language here under review.

Initially we note that **Rule 7** states that seniority in all instances is subject **to Rules 8 and 16**.

Rule 8 states clearly that displacements shall be based on seniority, fitness and ability. The clarifying note advises that an **employee shall** be considered as having adequate fitness and ability even though a period of supervision and direction may be required - but that the **employee need not have immediate** fitness and ability resulting from actual past experience in performing the work incident to a particular position.

But regardless of the above, Rule 16(a) states, in mandatory terms, that **employees** exercising displacement rights to positions held by junior **employees will** be allowed sixty (60) work days in which to qualify. To be sure, there are further provisions for removal before the expiration of the sixty (60) day period, but that concept is not in issue here. Moreover, those provisions could be said to strengthen the Organization's case.

The Board is not able to reconcile the Carrier's distinction between "bids" and "bumping" (cited above) **with the clear and** mandatory rules of the agreement. **Claimant** may not have been qualified to **immediately** assume the position, but there is no **showing** that she could not have performed with proper supervision and direction (**Rule 8**), **given** the "full cooperation of department heads and others" (Rule 16(c)). In short, Carrier has not satisfied its burdening of proving that affirmative defense.

It may be that certain hardships may result to a Carrier under these circumstances, but they are the result of the Carrier's contractual obligations, arrived at at the bargaining table.

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;

Award Number 21067
Docket Number CL-21145

Page 4

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:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1976.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 21067

DOCKET NO. CL-21145

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

NAME OF CARRIER: Elgin, **Joliet** and Eastern 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:

After a careful review of petition of the Organization for an interpretation of the Award, and Carrier's response thereto, we **find** that the Carrier's understanding of the intent of the Award is erroneous.

Carrier has compensated the Claimant, not the amount claimed, but the amount it feels is due under the terms of the agreement, and it calls our attention to Rule 53 in this regard.

Had the Carrier raised this issue on the property, we would have afforded it **upmost** consideration, but, it is clear that Carrier may not raise the issue at this late date. In short, a party may not seek a new Award under the guise of an Interpretation. See Interpretation No. 1 to Award No. 11676. See, also, Interpretation No. 1 to Award 11798.

Claimant is entitled to eight hours' pay at the pro rats rate of Position GT-357, as per the original claim from March 4, 1974 to March 4, 1975.

Referee Joseph A. Sickles, who sat with the Division as a neutral member when Award No. 21067 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 18th day of August 1977.