

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 21114
Docket **Number** cL-21120

Frederick **R. Blackwell**, Referee

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

PARTIES TO DISPUTE: (

(Missouri Pacific **Railroad** Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7833) that:

1. Carrier violated the **Clerks' Rules Agreement** which became effective **March 1, 1973**, when it **terminated** Mr. Kenneth L. Maddox's services in Seniority **District** No. 27 and **removed his name from** that **roster** in violation of **Rules 3, 18** and **related** rules of the **Clerks' Agreement**. (Carrier's file **205-4855**)

2. **Carrier** shall now be **required** to compensate Mr. Maddox for eight hours' pay at the pro rata rate beginning **December 18, 1973**, and continuing each subsequent day thereafter. Claim **is** in addition to any other **compensation** Mr. Maddox might receive **from the Carriers, who am parties** to the Agreement which **became** effective **March 1, 1973**, until the violation **is** corrected by restoring Mr. **Maddox's name** to Seniority **District Roster** No. 27.

3. Carrier **shall also** be **required** to **reimburse** Mr. Maddox for moving **expenses** in the **amount** of \$537.40 account of **Carrier's** arbitrary action and **abuse of discretion**.

4. **Carrier** shall **also** be **required** to pay Mr. Maddox **six percent (6%)** interest compounded annually, on the **monies involved** in this claim until the violation **is** corrected.

OPINION OF BOARD: The **parties • MoPac** that the Claimant has a seniority date of May 3, 1972, as a **Telegrapher-Clerk**, with the Texas and Pacific **Railway Company**, Seniority **District** No. 53, **Texarkana, Texas**; that he was furloughed from that company **in** October 1973; **and** that, from October 23 through December 17, 1973, he **worked a Telegrapher-Clerk Vacation** Relief assignment, **on** the property of the **herein Carrier**, the **Missouri Pacific Railroad Company**, at **Little Rock, Arkansas**, in Seniority **District** No. 27. On December 17, 1973, the Claimant was separated without a hearing **from his** employment with the **Mo Pac**, on the **basis** that he **was** an **employee** with **less** than **sixty days** service **whose** application for employment **had been** disapproved under **Rule 38(a)**.

The claim is that the **severance** of the Claimant without a hearing **was** violative of the Agreement, **because his employment** date of May 3, 1972 with the Texas and Pacific applioo to **his service** with the **Mo Pac** and he **was** thus entitled to a **Rule 18** hearing which **applies** to **dismissal** of employee with more than sixty **days** of service. **These assertions** am based on the contention that

the March 1, 1973 Agreement between **BRAC** and the **Mo Pac** Railroad Company, the Texas and Pacific Railway Company, and the Missouri-Illinois Railroad Company applies equally to all clerical **employees** of the three Carriers, subject to certain exceptions not herein pertinent; and that under such Agreement a clerical **employee may move from** a seniority district of the Texas Pacific to a seniority district of **Mo Pac**. The **Employees** contend further that the **Claimant** made a verbal request to be placed **on the Vacation Relief assignment** and that the situation is therefore governed by **Rule 6(d)** of the Agreement which provides that:

"(d) **Employees** filing applications for positions bulletined on other districts **or on** other rosters will, if they possess sufficient fitness and ability, be given preference over **non-employees**."

On the property the **Mo Pac** asserted that the **Claimant** had the status of a new **Mo Pac employee**, effective October 22, 1973, thus making a denial of the factual basis of the alleged **verbal request**.

Obviously, the parties' positions **raise** a threshold issue of whether the record establishes **that in** fact the **Claimant** made a verbal request to be assigned to the **position** in question, as contended by the **Employee**; and since this is the factual basis of the claim, the burden to establish such fact is of course **upon the Employees**. The sole evidence of record in this regard is **Employees'** Exhibit No. 8, which is a-October 23, 1973 "**Assignment Notice**" stating that **the Vacation Relief position** is assigned: to the **Claimant -- "senior unassigned Teleg-Clerk."** This document on its face is compatible with both sides of the issue under consideration, either that a verbal request was **made** or that one was **not made**, and the document **thus** has no probative value in proving the fact in issue. The Carrier challenged the factual basis of the alleged verbal request in its first letter of denial of the claim **and** there was thus **ample** notice that proof of the request was necessary. Although a letter or **statement from the Claimant**, reflecting **some information on** when and to whom the request was made, would have **been an** obvious step in assembling such proof, the record is barren of a statement of any kind from the **Claimant** to support the alleged **verbal request**. In these circumstances, and in **view** of the Carrier's early, clear challenge to the factual basis of the claim, it **cannot** be concluded that the **Employees' evidence** satisfactorily establishes the fact of the verbal request.

In view of the foregoing; the claim will be dismissed. It is noted, however, that the claim is dismissed solely on **evidenciary** grounds and that no issue concerning the interpretation of the **Agreement** has been reached.

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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

The claim is **dismissed**.

A W A R D

claim dismissed.

RATIONAL RAILROAD ADJUSTMENT BOARD
By **Order** of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, **Illinois**, this 16th day of July 1976.