NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21321

THIRD DIVISION Docket Number CL-21278

John H. Dorsey, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, (Freight Handlers, Express and Station Employes (Southern Pacific Transportation Company ((Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, GL-7919, that:

(a) The Southern Pacific Transportation Company violated the Agreement when it refused to allow Mrs. P. G. Williams to displace employe E. M. Robinette from Relief Position No. 159 when proper request was made therefor; and,

(b) The Southern Pacific Transportation Company violated the Agreement when it refused to allow Mrs. P. G. Williams to displace on Relief Position No. 159 following investigation held under the provisions of Rule 50 of the Agreement at which the evidence adduced positively proved she had been unjustly treated; and,

(c) The Southern Pacific Transportation Company shall now be required to allow Mrs. P. G. Williams to displace on Position No. 159 and compensate her at the rate thereof beginning June 3, 1974 and continuing until placed thereon.

OPINION OF BOARD: On June 3, 1974, Claimant was displaced from her Clerk position on the Guaranteed Extra Board. On the same date she filed application to displace Marie Robinette the then occupant of Position 159 (Relief). Robinette was junior to Claimant on the seniority list. The application was returned to her, by the Agent, on the same date with the following written on it:

"displacement declined account not qualified for Bill Clerk or train clerk and not entitled to training."

Claimant thereupon filed a request for an investigation as provided for in RULE 50 - GRIEVANCES alleging she was unjustly treated. Investigation was held on July 1; 1974. Following the investigation the Superintendent, on July 12, 1974, informed Claimant that evidence adduced at the hearing established that she wasdenied displacement rights because she was not qualified for the position and did not qualify for paid training under the terms of the Agreement. Appeal was processed in the usual manner up to Carrier's highest officer designated to handle the dispute. On October 15, 1974, Carrier's highest officer denied the claim for the following reasons:

> In conference of October 4, 1974 I pointed out that the displacement filed by Miss Williams was properly rejected since she was not qualified for the position on which she had attempted to locate herself nor was she entitled to the benefit of paid training under the terms of the current contract. Moreover, you were informed that the wage loss claimed would not be payable in any event since no showing could be made of a detriment having been suffered to this extent if indeed any had been sustained at all.

At the investigation: (1) Carrier's Zone Manager testified that Claimant was a better than average clerk; and, (2) Robinstte testified that she had been displaced on the Zone Guarantee Extra Board and she in turn displaced the occupant of Position 159 (Relief) not withstanding she had never worked the position before -- she had never worked any relief position in the yard prior to displacing the occupant of Position 159 (Relief) -- she was given three weeks training in the performance of the duties of Position 159 (Relief).

The issue presented is whether Claimant had a vested contractual right to: (1) displace Robinette; and (2) be given training, with Carrier's cooperation, to qualify as was Robinstte.

Rule 27 is the specific contractual provision applicable in resolution of the dispute. It reads:

> **PROMOTIONS, ASSIGNMENTS, DISPLACEMENTS**
>
> Employes covered by these rules shall be in line for' promotion. P-tions, 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 the senior employe to bid in a new position or vacancy, or to displace a junior employe, where two or more employes have adequate fitness and ability. In such cases the senior employe will be awarded the position unless it is obvious he cannot qualify. Employes shall be given cooperation in their efforts to qualify. (Emphasis supplied.)

It is not ambiguous.

In the record Carrier has adduced no evidence or allege that it was obvious that Claimant could not qualify to perform the duties of Position 159 (Relief).

The only evidence in the record of probative value relative to past practice on the property of application of Rule 27 is that permitting Robinette to displace a junior employe on Position 159 (Relief) and being given three weeks on the job training to qualify.

Under RULE 36 - FAILURE TO QUALIFY "An employe who is regularly assigned to position or makes a displacement, and fails, within a reasonable time, to demonstrate fitness and ability shall vacate position on which disqualified." This Rule when read in conjunction with Rule 27 persuades the Board to conclude that Carrier violated the Agreement when it failed and refused to honor Claimant's request to displace Robinette on Position 159 (Relief). Therefore the Board will sustain paragraphs (a) and (b) of the claim.

As to paragraph (c) of the claim we will award that Claimant be compensated for the amount of pay she would have received had her application to displace Robiuette been timely honored until she is assigned to Position 159 (Relief) LESS what she actually earned in Carrier's employ during said period of time.

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 Rmployes involved in this dispute are respectively Carrier and Employes 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 Carrier violated the Agreement.

A W A R D

Paragraphs (a) and (b) of the Claim are sustained. Paragraph (c) of the Claim is sustained to the extent setforth in the Opinion, supra.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1976.