

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21353  
Docket Number CL-21405

Irwin M. **Lieberman**, Referee

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

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood,  
**GL-7999, that:**

1. The Carrier violated the effective Clerks' Agreement when it refused to **permit Clerk** Doretha Campbell 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 **Doretha** Campbell for eight (8) hours' pay at the pro rata rate of Position No. GT 469, **commencing with March 14, 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 **469** which is held by a junior employee.

**OPINION OF BOARD:** On March 14, 1974 Claimant **sought** to displace a junior employee on Position **GT-469**, Clerk (to Freight Service Engineer). The principle duties of this position had been defined **as:**

"Preparation of reports and assembly **of necessary data**, statistical work, handling embargoes **and** clearances. Provide disposition as required on loaded cars and such other duties as may be assigned. Must be a typist."

Claimant's **displacement** request was denied on the **same** day by the Supervisor and was confirmed in writing the **following day** by the following statement:

"In our conversation on **March 13, 1974** at **5:05 P.M.** you **admitted and** our records verified **that** you had no prior experience and **completely unfamiliar** with the position. Therefore, your displacement was rejected."

The junior employee whom **Claimant wished** to displace **had been** in the position for eight days and, by **Carrier's statement**, "**....was being trained** on the position with substantially **full** time assistance by **a** supervisor."

Rule 7 of the Agreement specifies **that** the exercise of seniority in **all** instances is subject to Rules 8 and 16. Those Rules provide in **pertinent** part:

"RULE 8

**PROMOTION, ASSIGNMENTS AND DISPLACEMENTS**

**Employees** 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 past 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.

\* \* \* \*

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

Carrier's position in this dispute is **based** on two **major points**: **the Claimant's** admission that she did not have the ability to perform in this position **immediately** and second an historical **differentiation** between bids and displacements.

On the first point it is interesting to note that Carrier raised no reasons for denying Claimant's displacement except that she admittedly knew little about the position **and had** no experience in it. Carrier **belatedly** (after completion of the handling on the property) attempted to analyze the job requirements and skills needed; such material, both argument and **evidence**, **may** not be considered in the determination of this dispute under Circular No. 1 and in accordance with a host of **Awards** of this Division (including Awards 19722, 11027, 19746 and many others).

A number of **comments** on fitness and ability in this dispute must be noted. First, it is unusual and unacceptable to **deny** a senior **employee** a position solely on the basis of **lack** of experience, **particularly** in the light of Rule 16 **supra**. **Again**, in a large number of disputes this Board has affirmed the position aptly put in Award 4026:

"Therefore, experience **cannot** be a consideration in determining the sufficiency of the initial fitness **and** ability for promotion. Since lack of experience appears to be the only reason Claimant was not assigned the position, Carrier violated the Agreement since **Claimant** should have prevailed because of her seniority."

It seems wholly unreasonable for Carrier to deny **Claimant** the right to **the sixty-day** period provided in Rule 16 while according that **privilege to a** junior **employee** who had **only** been in the position for **eight days**. It is evident that Carrier's position, to be sustained, must be supported by credible evidence of record to show a reasonable basis for the disqualification (**Award 19660**). We do not find such evidence in this case.

Carrier **makes** the point in its submission that in **virtually all** displacements (on this position at least) the displacement request had been approved because the prospective incumbent had, at some time, "bid" onto the **assignment**: had prior experience. As indicated **above**, Carrier **makes** the point that historically the distinction existed between **displacements** and bids in that an **employee** bumping must be able to fill the position **immediately** as distinguished

from an employe bidding for the job. The identical issue has been 'considered by this Board recently in Award 21067 which construes the applicable Roles, including the Note to Rule 8. We concur in the reasoning on this issue expressed in that Award, particularly with respect to the mandatory implications of Rule 16(a) and agree that an employe need not have immediate fitness and ability resulting from actual past experience in the position. We also cannot, reconcile the distinction Carrier makes between "bidding" and "bumping" in the light of the clear and mandatory rules of the agreement. To accept Carrier's reasoning would effectively modify the language of Rule 8 and nullify the clear mandate of Rule 16. For all the foregoing reasons, the Claim must be sustained.

**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 Employes 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 Agreement was violated.

A W A R D

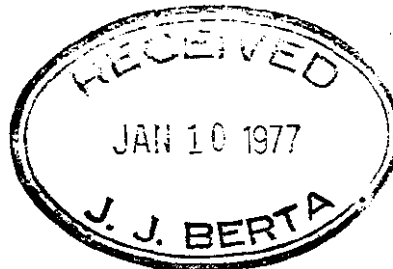
Claim sustained.

ATTEST:

A. W. Pauls  
Executive Secretary

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

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



NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 21353

DOCKET NO. CL-21405

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:

The positions of both Carrier and Petitioner with respect to the **Organization's** request for interpretation **have** been carefully reviewed. It is apparent that there were substantial misunderstandings **on** the part of both parties with certain aspects of this dispute.

At the outset, it **must** be emphasized that Carrier is in error in contending that its liability ceased when Claimant failed to bid on the position in question on May 13, 1974. The language of the **award** is clear and the intent **was** not as Carrier contends; the liability ceased only when an **employee** senior to Claimant exercised displacement rights to the position in question. The record indicates that the date of such displacement by a senior employee was September 9, 1974. Claimant was not obligated to bid for the position subsequent to Carrier's initial denial of her displacement request **and** the award made no findings supporting **Carrier's** contrary argument.

From a study of the record, Petitioner is in error in its contentions with respect to Carrier allegedly attempting to mitigate the damages. Carrier has clearly indicated that it is complying with Interpretation No. 1 to Award 21067 which governs this case as well.

Claimant is entitled to eight hours' pay at the pro rate rate of Position GT-469 from March 14, 1974 to September 9, 1974.

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Referee Irwin M. Lieberman, who sat with the Division as a neutral ~~member~~ when Award No. 21353 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 16th day of June 1978.