

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21387
Docket Number CL-21294

James C. **McBrearty**, 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-7931, that:

1. The Carrier violated the effective Clerks' Agreement when it employed the services of outsiders having no previous employment relationship with the Carrier, and no antecedent seniority to fill short vacancies, and/or **perform** extra work in South Chicago, Illinois, when there were bona fide **employees** in the service of the Carrier available to perform such work.

2. The Carrier shall now compensate each of the following named claimants for eight (8) hours' 'pay at the time and one-half rate of the position specified for each of the following dates:

<u>Claimant</u>	<u>Date</u>	<u>Position</u>	<u>Non-Bonafide Employee Used</u>
R. Jablonski	6-20-73	GT 180	J. Mackey
A. Staat	6-20-73	GT 480	H. Gnesiak
K. Jones	6-20-73	GT 493	M. Logan
R. Rozek	6-21-73	GT 480	H. Grzesiak
J. Bonnar	6-21-73	GT 180	J. Mackey
A. Staat	6-21-73	GT 493	M. Logan
P. Young	6-21-73	GT 572	M. Logan
M. Floyd	7-10-73	GT 480	K. Douglas
D. Parker	7-12-73	GT 480	K. Douglas
D. Parker	7-13-73	GT 480	K. Douglas'
J. Bonnar	7-16-73	GT 180	K. Douglas
R. Franklin	7-16-73	GT 480	J. McKibbon
D. Parker	7-28-73	GT 480	A. Willis
H. Gnesiak	7-29-73	GT 480	A. Willis
J. McKibbon	7-31-73	GT 180	A. Willis
H. Gnesiak	7-31-73	GT 480	T. Hinc
M. Dombrowski	8-1-73	GT 180	A. Willis
C. Daniels	8-1-73	GT 480	T. Hinc
H. Powell	8-1-73	GT 581	V. Parkhill
H. Olson	8-1-73	GT 493	C. Miller

D. Parker	8-2-73	GT 480	T. Hinc
H. Olson	8-2-73	GT 493	C. Miller
H. Powell	8-2-73	GT 581	V. Parkhill
D. Parker	8-3-73	GT 480	A. Willis
H. Powell	8-3-73	GT 581	C. Miller
H. Olson	8-3-73	GT 493	T. Hinc
M. Floyd	8-3-73	GT 196	V. Parkhill
S. Mitchell	8-4-73	GT 196	V. Parkhill
C. Daniels	8-6-73	GT 180	C. Miller
H. Olson	8-6-73	GT 493	T. Hinc
M. Cwiklinski	8-6-73	GT 196	V. Parkhill
M. Floyd	8-7-73	GT 180	C. Miller
R. Franklin	8-7-73	GT 480	H. Atkins
J. Bonnar	8-7-73	GT 493	T. Hinc
M. Dombrowski	8-7-73	GT 196	V. Parkhill
G. Rea	8-9-73	GT 180	V. Parkhill
H. Powell	8-9-73	GT 195	C. Miller
H. Olson	8-9-73	GT 493	H. Atkins
D. Parker	8-9-73	GT 196	T. Hinc
D. Parker	8-10-73	GT 180	V. Parkhill
H. Powell	8-10-73	GT 195	C. Miller
H. Olson	8-10-73	GT 493	H. Atkins
H. Zack	8-10-73	GT 182	T. Hinc
H. Olson	8-11-73	GT 493	H. Atkins
M. Dombrowski	8-13-73	GT 194	C. Miller
R. Jablonski	8-13-73	GT 203	T. Hinc
J. Bonnar	8-13-73	GT 581	H. Atkins
A. Staat	8-13-73	GT 480	R. Arnold
H. Olson	8-13-73	GT 494	V. Parkhill
D. Parker	8-14-73	GT 202	T. Hinc
R. Fuller	8-14-73	GT 180	D. Chyzy
M. Floyd	8-14-73	GT 480	R. Arnold
H. Olson	8-14-73	GT 494	V. Parkhill
K. Jones	8-15-73	GT 203	T. Hinc
A. Staat	8-15-73	GT 180	D. Chyzy
D. Parker	8-15-73	GT 480	R. Arnold
H. Powell	8-15-73	GT 182	V. Parkhill
A. Staat	8-16-73	GT 203	T. Hinc
H. Powell	8-16-73	GT 195	R. Arnold
H. Olson	8-16-73	GT 581	H. Atkins

C. Miller	8-16-73	GT 182	V. Parkhill
H. Olson	8-17-73	GT 581	H. Atkins
H. Powell	8-17-73	GT 195	R. Arnold
R. Franklin	8-20-73	GT 194	D. Chyzy
A. Staat	8-20-73	GT 202	A. Atkins
C. Daniels	8-20-73	GT 493	R. Arnold
H. Powell	8-21-73	GT 480	P. Moore
A. Staat	8-21-73	GT 493	R. Arnold
H. Grzesiak	8-22-73	GT 480	P. Moore
J. Bonnar	8-22-73	GT 194	D. Chyzy
S. Mitchell	8-22-73	GT 493	R. Arnold
C. Daniels	8-22-73	GT 180	H. Atkins.

OPINION OF BOARD: On or about June 20, 1973, the Carrier inaugurated a program to augment its regular work forces at its facilities in South Chicago, Illinois by employing the services of outsiders having no previous employment relationship with the Carrier.

These employees were used to fill short vacancies and/or perform extra work primarily as yard clerks and janitors, positions allegedly requiring a **minimum** of training, **on** the various dates and positions set forth in the **statement** of claim.

On each of **the occurrences** set forth in the Statement of Claim, Petitioner alleges there were bona fide employees, **having** seniority with the Carrier, available to perform the work performed by these outsiders. However, according to Petitioner, such bona fide employees were not requested to do so by Carrier.

The employees' position in this dispute is, simply stated, that the Carrier does not have a right under the **terms** of the collective bargaining Agreement to employ the services of outsiders having no previous employment relationship and without "antecedent clerical seniority" to perform extra work, and/or fill short vacancies, when in fact, there are **employees** possessing seniority and all other rights under the Agreement available and willing to perform such work.

The applicable **rules** of the Agreement are as follows:

"RULE 1 - SCOPE AND WORK OF EMPLOYEES AFFECTED

"(A) These **rules** shall govern the hours of service and working conditions of all employees engaged in the work of the craft or class of clerical, office, station and store-house **employees**. Positions or work **coming** within the scope

"of this agreement **belong** to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules, nor shall any officer or employee not covered by this agreement be **permitted** to perform **any** clerical, office, station or storehouse work which is not incident to his regular duties.

"(B) Whenever any mechanical device used for **handling**, duplicating, recording, transcribing, transmitting or receiving written, typed, printed, graphic or vocal **communications**, reports or records, or any combination of these, within the same or between different cities, is utilized for the accomplishment of work heretofore **performed** by employees subject to the scope of this Agreement, such mechanical devices shall **be operated** by **employees** covered by this agreement.

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"**RULE 3 - SENIORITY**

"(a) Seniority begins at the time an **employee's** pay starts on any position within the scope of this agreement.

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"**RULE 7 - EXERCISE OF SENIORITY**

"The exercise of seniority in all instances is subject to the provisions of Rules 8 and 16.

"**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 10 - TEMPORARY ASSIGNMENT

'Bulletined positions may be filled temporarily pending an **assignment and** in the event no applications are received from **employees** in the seniority district where the new position or vacancy occurs, the position **may** be filled by appointment except as otherwise provided in Rule 19.

"RULE 11 - SHORT VACANCIES

"(a) Vacancies of less than twenty-five (25) calendar days duration shall be considered short vacancies and **may** be filled without bulletining. When there is reasonable evidence that such vacancies will extend beyond the twenty-five (25) calendar day limit, they shall be promptly bulletined, showing probable or expected duration.

"(b) Employees shall be selected **to fill** positions pending assignment by bulletin and all short vacancies in accordance with Rules 8 and 19.

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"RULE 19 - REDUCING AND INCREASING FORCE

"(a) When forces are reduced, seniority rights shall govern. A proposed reduction in force (or abolishment of positions) shall be bulletined at least five (5) working days in advance of the date the reduction (or abolishment) is to be effective and **employees** affected by the reduction (or abolishment) shall be paid up to the end of that period. **Employees** whose positions are abolished **may** exercise their seniority over junior **employees** and such junior **employees**, upon being displaced, may exercise their seniority rights in the same manner. Any **employee** whose position is abolished or who is displaced, whose seniority entitled him to a regular position, shall exercise such seniority rights within seven (7) calendar days or lose such displacement rights. An **employee** who does not possess sufficient seniority to displace a junior **employee, or who** fails to assert displacement rights within seven (7) calendar days, shall be considered as furloughed. An **employee** whose seniority entitles him to a regular position, shall not be permitted to perform any work during the seven (7) day period available to him for exercise of his displacement rights, unless he elects to forego displacement upon a regular position and accept the status of a furloughed **employee**. A List of **employees** furloughed under this **rule** shall be supplied by the *management* to the Local and General **Chairmen**.

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"(f) **Employees** desiring to protect their seniority rights and to avail themselves of this **rule** must keep their current names and addresses on file, both with the proper officer (the officer authorized to bulletin and award positions) and the Local Chairman, and advise of any change in addresses, except in cases of personal illness or other unavoidable causes. The official and Local Chairman shall sign and return to the **employee** as a receipt one copy of the changes in address so filed.

"(g) When forces are increased or vacancies occur, furloughed employees shall be returned to service in the order of their seniority rights. **Such** employees, when available shall be called in seniority order for all extra work, short vacancies or vacancies occasioned by the filling of positions pending assignment by bulletining which are not filled by employees' voluntary **rearrangement** of regular forces. When a bulletined new-position or vacancy is not filled by an **employee** in service senior to a furloughed **employee who** has protected his seniority as provided in this **rule**, the senior furloughed **employee** shall be called and assigned to the position. Furloughed employees failing to return to service within seven (7) calendar days after being notified (by certified or registered mail, return receipt requested, sent to the address last given) or give satisfactory reason for not doing so will be considered as out of the **service**.

NOTE: **Employees** voluntary rearrangement of forces shall be confined to regular positions with identical starting times in a specific office or yard at one Location, and in such a voluntary rearrangement only those **employees** reporting that day for work on their assignments shall participate.

"(h) Furloughed employees desiring to waive their right to return to service on positions or vacancies of less than twenty-five (25) calendar days duration **may** do so by filing **written** notice with the proper officer as defined above and the Local Chairman; such notice may be **cancelled** or terminated in the same manner.

"RULE 70 - DATE EFFECTIVE AND CHANGES

"This agreement including Supplements No. 1 through No. 18, shall be effective January 1, 1974, superseding all other rules, agreements and understandings in **conflict herewith**; and shall continue in effect until changed as provided herein or in accordance with the Railway Labor Act, as amended.

"Should either of the parties to this agreement desire to revise or **modify** these rules, thirty (30) days' written advance notice containing the proposed changes shall be given and conference shall be held **immediately** on the expiration of such notice unless another date is mutually agreed upon."

The Board finds that it must cut the GORDIAN knot inextricably tied by both parties in raising a myriad of allegations pertaining to such crucial issues as seniority, call-in procedures, training, and vacation relief. As if this were not enough, the parties have persisted in clouding the above issues with phraseology such as, "antecedent seniority," "bona fide **employee**," "last ditch effort," and "training for 'ultimate' vacancies."

Certainly one of the purposes of seniority rules is to **preserve** the right to perform the work first for those who have established seniority. **Rule** 19 as well as the Calling Procedures Understanding do not authorize work to be done by one without established seniority when there are those with established seniority available and willing to do the work.

After separating the wheat from the chaff, the instant case boils down to whether or not Claimants were available and willing to do the work in question.

A careful review of the entire record, as well as the arguments of the parties, indicates that Petitioner has not introduced evidence of substantial probative **value to** indicate that **Carrier** did not first attempt to call Claimants before assigning "trainees." Carrier's records indicate that on some of the dates in question, Claimants either refused the work, were not home, or did not have a phone number where they could be properly contacted. On other dates, the trainees were being trained **or** "broken in" under the supervision of regular **employees**, and not taking away work to which regular **employees** were entitled.

Under the totality of circumstances in the instant case, the Board has no choice but to 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;

Award Number 21387
Docket Number CL-21294

Page 8

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of -January 1977.

