

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRDDIVISION

Award Number 22177  
Docket Number CL-21780

Herbert L. Marx, Jr., Referee

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

STATEMENT OF CLAIM: **Claim** of the **System Committee** of the **Brotherhood**,  
GL-8176, that:

(a) The Southern Pacific Transportation **Company** violated the **current Clerks' Agreement**, Rules 26, 27 and 33 thereof, when it refused to accept Bonnie Bruce's application for Position No. ~~694~~ (p) Clerk to Terminal **Superintendent**; and,

(b) The Southern Pacific Transportation **Company** violated the current Clerks' **Agreement** when it failed to **assign** Bonnie Bruce to Position **No. 694** following investigation held under Rule 50 thereof at which the testimony adduced revealed that she was entitled to be **placed** thereon by the provisions of Rules 26, 27 and 33; and,

(c) The Southern Pacific Transportation **Company** shall now be required to place Bonnie Bruce on Position No. ~~694~~ and give her cooperation in her efforts to qualify in accordance with Rule 27 of the **Agreement**.

OPINION OF BOARD: This case disputes Carrier's failure to award Position 694, Clerk to **Terminal Superintendent**, to Claimant. However, it is undisputed that before the junior **employee** Carrier had assigned to this position began work on it, she was displaced by an **employee** senior to the **Claimant** and, for the duration of time which this claim **encompasses**, **Claimant's** seniority would not **enable** her to hold the disputed **assignment**.

In an early Award, No. ~~3412~~, the Board held:

"This is a **claim** for violation of the **Agreement** between the Organization and the Carrier by assigning work, covered by the **Scope** Rule, to persons holding no seniority rights under the **agreement**."

"Notice of intention of the Organization to file an ax parte **submission** of tha claim was served on this Board under date of April 16, 1946.

It appears **from** the record that the facts giving rise to the dispute ceased to exist in February 1946.

It is clear, therefore, that the **claim** was **moot** before the jurisdiction of this Board was invoked. The Organization, nevertheless, urges the Board to accept jurisdiction as an application for **interpretation** of the **Agreement**. In support of its position, the Organization cites Award No. 2670. **That** was a case where the Carrier asked this Board to construe certain provisions of the **agreement** as applied to certain situations. The Board, of course, has jurisdiction under the Railway Labor Act to take jurisdiction of such applications.

**This**, however, is no **such** application. It is a **claim** based **upon** an alleged violation of the **Agreement**. The facts upon which violation of the Agreement is predicated **having** ceased to exist before the jurisdiction of this Board **was** invoked, the dispute is moot and should be dismissed. See Award 619."

The Board likewise finds here that this **dispute** is moot. **Claimant's** seniority would never have entitled her to work the position in question, leaving the entire issue and **dispute academic**. Consequently, the claim **will** be **dismissed**.

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 apprwed June 21, 1934;

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

That the **claim** be dismissed.

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~~Claim~~ dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A. W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1978.