

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22220
Docket Number CL-22099

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(**Express and Station Employees**
(
(Soo Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8439) that:

(1) Carrier violated the effective Clerical **Agreement**, particularly Rules 25(b) and Rule &'(a) when it refused to allow Claimant Van Wesner to exercise his seniority and displace to a position held by an **employee** junior to him.

(2) Carrier shall **compensate** Claimant Van Wesner in addition to **what** he received **on** the dates of this claim, an additional **8** hours' pay at the pro rata rate of pay of Basic Clerk No. 1 for each work day of that position and **compensation** for overtime **worked** on the position of Basic Clerk No. 1 for April 26, 1976, through May 21, 1976.

OPINION OF BOARD: On April 12, 1976, Claimant's assigned hours as Bill Clerk were changed from a starting **time** of 1:00 P.M. to a starting time of 3:00 P.M., effective April 15th. On April 19th, at the **instruction** of management, Claimant began to work on a vacated position of Chief **Bill** Clerk with a starting time of 3:00 P.M. (the position had **become** vacant due to the incumbent displacing as a result of changed starting time). On April 23rd Claimant notified Carrier of his intention to displace to **Basic Clerk #1** and acknowledged that training would **be** required **on** data processing **equipment**; Claimant's notification indicated that he desired to displace effective April 26th. By letter dated April 26th Carrier acknowledged Claimant's displacement **memo** and indicated that he would be advised of the effective date and training would be arranged. On April 27th Claimant requested that his displacement **become** effective May 3, 1976. On April 30th he was informed that he would be advised at a later date **when** the **displacement** would become effective in order to avoid work force disruption. The **Claim** herein was initiated on May 1st because Claimant was allegedly **improperly held** off the position of Basic Clerk. On May 4th Claimant was **informed** that his **claim** was denied since training was not available and **further** the **new incumbent of Claimant's old** position required training by him.

On May 4th the Basic Uerk being displaced by Claimant was notified of his **displacement**; he exercised his right to the Chief Bill Clerk position on May 13th. On May 20th Claimant was advised to report to his new position of Basic Uerk on May 24th. These facts are not in dispute.

The relevant rules, **relied** on by Petitioner state:

"RULE 25. TIME IN WHICH TO QUALIFY.

* * * * *

(b) Where the use of data processing **equipment** is a **requirement**, **employees** otherwise possessing sufficient fitness and ability, will, if necessary, be given **training comparable** to that given at **time** of initial installation of **equipment**. Employees in training shall be paid the pro rata rate of the position to which assigned."

"RULE 47.CHANGING ASSIGNED STARTING TIME OR ASSIGNED REST DAYS.

(a) Regular **assignments** shall have a fixed starting **time** and the regular starting time shall not be changed without at least thirty-six hours' advance notice to the **employees** affected. When the established starting **time** of a regular position is changed one hour or more for **more** than five consecutive days, or is changed in the aggregate in excess of two hours during a period of a year; or the assigned rest days are changed, the employees affected may within ten days thereafter, upon twenty-four hours' advance notice, exercise their seniority rights to any position held by a junior **employee**. Other employees affected may **exercise** their seniority rights in the **same manner**."

Carrier also relies on Rule 55 which provides:

"RULE 55. PRESERVATION OF RATES.

Employees temporarily assigned or **permanently** assigned to **higher** rated positions shall receive the **higher** rates while occupying the said position; **employees temporarily** assigned to **lower** rated positions **shall** not have their rates reduced.

"A temporary **assignment contemplates** the fulfillment of the duties and responsibilities of the position **during** the time occupied, whether the regular occupant of the position is **absent** or whether the **temporary** assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated **employee** due to a temporary increase in the **volume** of work does not **constitute** a temporary assignment.

This rule will not apply where absent **employee** is paid on account of sick leave."

Carrier argues primarily **that** Rule 47(a) **does not contain a time limit in which** Carrier must make the **assignment** requested by the **employee**. In the absence of such a proviso, **Carrier** states that it has the right to make the **assignment within** a reasonable period of time and cites a number of Third Division Awards in support (20070, 23319, 3942, 2881, and 2174). Carrier also argues that it maintained **Claimant** in his old position **properly** in order to train his **replacement** and further that there was **no** one available to train **Claimant** in the data processing functions of his new position. Additionally, Carrier asserts that it had the right under **Rule 55** to **temporarily** assign Claimant to his old position for the purpose of training the **replacement**. Carrier **states** that a total of seven other **employees**, other than Claimant, required **training** under **the provisions of Rule 25** (b) at the same time and that to have acceded to Claimant's request **would** have resulted in **untenable** and absurd consequences. It is argued that Carrier, under the circumstances, **employed** a reasonable interpretation of the Agreement in its actions with respect to **Claimant**.

The Organization pointed out that **Claimant's** seniority rights were blatantly ignored by Carrier in this transaction. It is argued that Rule 47 (a) is clear and unequivocal and that Claimant had the right to the new position at the **time** he exercised his seniority **rights**. This right was in no way abrogated by Rule 55 (or its application) according to the Organization; in **addition** it is pointed out that no defense based on **Rule 55** was raised during the handling of this dispute on the property. The Organization also states that the line of awards cited by Carrier (**supra**) all deal with bidding situations **and** are not comparable to the dispute herein.

While we recognize the fact **that Carrier** had serious personnel problems at the time of the **displacement** move by Claimant, it must be noted that the **entire matter was** as a result of Carrier's own decision to change the starting times by two hours... and it **was** not initiated by the employees involved in the various moves.

Petitioner is correct in ~~that~~ the prior cases cited by Carrier dealt with assignments resulting from bids rather than from the exercise of seniority due to displacement, or other reasons. However, Carrier is correct in the point of view that a contract must be construed in a reasonable fashion. We take no issue with the principles expressed in the awards relied on by Carrier; we merely question the applicability of those principles to this dispute. It is noted in passing, that the **Bulletin Rule** in the **applicable Agreement (Rule 15)** provides that an employe awarded a bulletined position will be transferred to such assignment within seven calendar **days** after issuance of the assignment bulletin.

There have been a **series** of prior disputes **before** this **Board** involving displacements or the exercise of **seniority** and the effective date of assignments pursuant to such moves. Two such awards are particularly **analogous** to this dispute. In Award **12459**, which dealt with a rule almost identical with **Rule 47 (a)** herein, Carrier waited two days to implement the displacement. The **Board** held:

"It being admitted that Claimant, within the time specified in **Rule 35 (b)**, gave **36** hours' notice of displacing prior to September **12**, the only issue is whether Claimant had an absolute right to displace the junior **employe** on that date.

Rule 35 (b) is unqualified and unequivocal. We find that Claimant's right to displace the junior employe on September **12**, having satisfied the prerequisites, was absolute. Carrier's refusal to permit Claimant to exercise this vested right violated the Agreement."

In Award **12224**, **again** a similar situation to that herein confronted the Board. In that case, the **Board** held:

"Seniority is one of the **most** basic essentials of a collective bargaining agreement. Without some secured right to job priority, there would be no need for such an agreement; there would be no need for effective **labor-management** consultation. Claimant had contractual seniority rights to displace a junior **employe** when his position was abolished. Such rights **accrued** on September 21, 1958. **He should have** been permitted to displace a junior employe on September 22, 1958. Since he was not permitted **to do so until** a week later, he is entitled to forty (**40**) hours straight time pay at the hourly rate Of the job to which he was assigned on September 29, 1958."

In this dispute, **Carrier** had a series of significant training **problems**. However, it should not **have** solved its problem at the expense of Claimant's rights. A practical solution could well have been the immediate **assignment** of Claimant to the Basic Clerk position **and then** the exercise of Carrier's prerogatives **under** Rule 55, including Claimant's temporary transfer. However, **Carrier** did not choose to assign Claimant to the position his seniority entitled him to for several weeks. This was not reasonable, on balance, since **Carrier** had other alternatives, **including** that indicated above. **In** addition, Carrier's actions were contrary to Rule 47 (a) and the interpretations contained in prior awards. Consequently, the **claim must be** sustained. However, Claimant will only receive compensation from **May 3rd**, the date he asked **that** his displacement should **become** effective, to May 24th.

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

That **the Agreement was violated.**

A W A R D

Claim sustained to the extent indicated in the Opinion.

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

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, **Illinois**, this 15th day of November 1978.