

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Ember 22376
Docket Number CL-22167

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers
(Express and Station Employees
(
(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM: Claim Of the System Committee Of the Brotherhood
(GL-8452) that:

(a) The Carrier violated the Rules Agreement, effective December 1, 1949, as amended January, 1958, particularly Rule 1(c), when it assigned a junior employee to Chief Clerk's Position #2, located at Blue Island Station. Senior Claimant, Helen W. Grills, has equivalent qualifications and had requested the assignment.

(b) The Carrier be required to compensate Helen W. Grills for the difference in rate of pay between her Position #204 and Position #2, effective February 18, 1976 and continue each day until she is properly assigned to Position #2, Chief Clerk.

OPINION OF BOARD: In February, 1976, Carrier posted a permanent vacancy for a position which it contends is covered by Rule 1(c):

"(c) The following positions are excepted only from the promotion, assignment, displacement and hour8 of service roles of this agreement and the holders thereof shall continue to be paid flat monthly rates to cover all services rendered. When filling vacancies in such positions, the senior qualified employee in the seniority district where the vacancy occurs who desires same will be assigned to such vacancy."

Nine (9) individuals submitted requests for the position, and Claimant was the most senior of that group. However, the position was awarded to the "fourth oldest" of the interested applicants.

In their submission, the **Employees** stated the issue to be whether Carrier **can**:

"...completely ignore the specific language of Rule 1(c) when it assigned Position #2, Chief Clerk, to a junior **employee**, instead of assigning the senior **employee**, the **Claimant**, whose past work experience has obviously qualified her for this position."

The Carrier argues **that** past practice concerning permanent vacancies clearly supports its action here, whereas the last portion of Rule 1(c) **has** only been applied (**in** the manner urged by the **Employees**) concerning temporary vacancies.

The Organization asserts that prior acquiescence in appointments **was** merely indicative of "concurrency in qualifications and/or seniority," but was not **an** acceptance of a practice clearly in violation of the agreement. In other instances, the adversely affected **employees** chose not to protest the matter.

Both parties have presented to us cited authority **in** support of their positions, but those **Awards** have not been particularly pertinent to this dispute, **because** this controversy stems from the fact that the rule 88 presented is - in our view - **contradictory** in its terms. Each party has suggested **that** if we fail to **adopt** its interpretation, we, in essence, **are** writing out of existence **8 part** of the agreement, **and** to some extent, each side **may** be correct.

Clearly, the rule states that the position **in** question is excepted from the promotion rule (**among** others), but it then states **8 specific manner** in which a vacancy in the position **will** be filled. A repeated reading of the rule **almost suggests** that its **initially** designed to **corer** incumbents (when written) but **was** also to provide for future vacancies. **However, we may not base an Award upon such a speculative presumption.**

We have not **lost** Sight of Carrier's assertion **that** the final **phrase** has been used only regarding temporary vacancies, but **Rule 1(c)** is not so limited. Nor have we ignored **Carrier's assertion** of past **practice and** the **Employees'** contentions in that regard.

In the final **analysis**, we return to the Rule, **as** written. Regardless of the extent of the conflict in its context, the **fact** remains **that** it contains a specific mandate to assign the **senior** qualified **employee**. **Carrier**, in its brief, questions the logic of exempting certain rules if the senior **employee** has the right to the position. We have struggled with that concept **at** length, and can only state **that** we did not write the rule; but we are **charged** with the responsibility of interpreting it. **Carrier** did not **dispute** the Claimant's qualifications on the property and thus, 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 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.

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

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1979.