

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22636
Docket Number CL-22023

Dana E. Eischen, 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-8348) that:

1. The Carrier violated the effective Clerks' Agreement when it refused to permit Clerk J. Moran to exercise his displacement rights over a junior employee effective with the date he was displaced, thereby depriving him of the work to which he was entitled;

2. The Carrier shall now compensate Clerk J. Moran for eight (8) hours' pay at the time and one-half rate of position GT-492 for September 17, 1975.

OPINION OF BOARD: Claimant was the regular incumbent of position 6-552, tour of duty 11:00 PM to 7:00 AM. Upon reporting for duty on September 16, 1975, Claimant was notified that he was displaced by a senior employee on position GT-552 effective with the end of his tour of duty, that is, at 7:00 AM, September 17, 1975. Upon being so notified, Claimant sought to displace a junior employee on position GT-492, tour of duty 7:00 AM to 3:00 PM to be effective 7:00 AM, September 17, 1975. The incumbent of position GT-492 was notified that she had been displaced and did not report for duty on that position. Neither was Claimant allowed to work the position.

Carrier relies upon a 1959 case settlement for disposition of the matter. However, that settlement did not involve an identical fact situation.

The issue here is whether Claimant can exercise a displacement immediately upon being displaced. There is no evidence presented to validate Carrier's delay of Claimant filling the assignment. In the circumstances of the case, Rule 42(a) is applicable to an employee moving from one assignment to another (Award 20 of Public Law Board 31 between these parties). The claim will 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 **November 1979**.