

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22716
Docket Number CL-22437

James F. Searce, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees

PARTIES TO DISPUTE: (
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8582) that:

1. Carrier violated the Agreement between the parties when on Monday, February 21, 1977 and Tuesday, February 22, 1977, it did not allow Junior Investigator Clerk J. W. Simpson compensation.

2. As a result of its violative action Carrier shall now be required to compensate Clerk Simpson for sixteen (16) hours pay based on the rate of \$1,244.23 per month.

OPINION OF BOARD: Claimant herein held Position 94 - Claim Clerk - when by date of February 3, 1977, he was advised of displacement by a senior clerk. Concurrent with such events, the incumbent of Position 135 - Junior Investigator - had given notice of a need for leave of absence to attend military training. Notice was posted to fill the vacancy of Position 135, the notice specified: "Duration - Two Weeks." Claimant bid, was awarded and assumed such position effective February 7, 1977. During his assignment to Position 135, Claimant requested and was granted vacation for the period February 14 through 18, 1977 -- the last week of his bid assignment (the vacancy was a Monday-Friday assignment). February 21, 1977 -- the next regular work day for the Junior Investigator position -- was a holiday for all employees. On Tuesday, February 22, 1977 the Claimant presented himself at the appropriate office immediately prior to commencement of the shift (8:00 a.m.) and orally requested an opportunity to displace a junior clerk, then occupying Position 118 -- a Claim Clerk position. Claimant was denied such opportunity to do so and was required to present such bid in writing after commencement of the shift; he did so and was allowed to displace the junior clerk on Position 118, effective February 23, 1977. Claimant was paid for neither February 21 nor 22 on the basis that his status (as Junior Investigator) expired at the close of business (5:00 p.m.) on February 18, 1977. The Carrier also contends the Organization cannot substantiate such claim by reference to any applicable rules.

The Organization argues that the **Claimant** is allowed to exercise displacement against a junior employee by virtue of the provisions of:

"Rule 18 - STATUS AFTER LEAVE OF ABSENCE, ETC.

(a) An employee returning to duty after leave of absence, vacation, **sickness**, disability, suspension, or returning from **military** service, **may** return to former position provided it has not been abolished **or** senior employee **has not** exercised **displacement** rights thereon, or **may** upon return, or within three calendar days thereafter, exercise seniority rights on any position bulletined during such absence for which he would **have** had an opportunity to apply had he not been absent from duty, **i.e.**, except positions bulletined as a result of his absence.

(b) **In** the event **employee's former** position has been abolished or senior employee has exercised displacement rights thereon, the returning employee will be governed by the provisions of **Rule 20.**"

and also the provisions of Rule **20:**

"Rule 20 - REDUCTION IN FORCE

(d) An employee whose position is abolished or an employee displaced from his regular position shall exercise seniority in writing within ten calendar days, except in cases of personal illness, **unavoidable** causes, lack of fitness and ability, or inability to exercise **seniority** due to the fact that **no** position is available...."

We find no basis to affirm **the** Organization's contention as to the Claimant's rights of displacement. The Claimant was fully aware that his tenure in the Junior Investigator position had a specific time limit -- two weeks. **The** Organization argues he was in such position until he was relieved, relying upon the argument that the incumbent **may not have** returned as planned. Such a contention is speculative and incapable of proof; what's certain is that **the** vacancy bid was for a two week duration. The Claimant certainly was not unaware of the temporary nature of his assignment, and given that he had been displaced from his former position by a **more** senior employee, his need to **ensure** a future assignment should have been an obvious priority.

We are not able, however, to support the Carrier's position insofar as pay for the holiday which fell on **Monday**, February 21, 1977 is concerned. The facts of this case lead to a conclusion **that** the Claimant was "available for service" on February 22 and indeed would have performed such service had the Carrier allowed him to displace. The applicable provision of **Rule 40 - Holiday Pay** -- at **(c)** states:

"All others for whom holiday pay is provided in Paragraph (a) hereof shall qualify for such holiday pay if **on** the workday preceding and the workday following the holiday they satisfy one or the other of the following conditions:

1. Compensation for service paid by **the** Carrier is credited; or
2. Such **employee** is available for service.

NOTE: 'Available' as used in subparagraph (2) above is interpreted by the Parties to mean that an **employee** is available unless he lays off of his own accord or does not respond to a call, pursuant to the roles of the applicable agreement, for service."

The **Claimant** neither laid off of his own accord **nor** failed to respond to a call. Consequently, we find the denial of pay for February 21, 1977 -- the holiday -- in error.

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

The Master Agreement was violated to the extent set forth in the Opinion.

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Claim is sustained to the extent that pay for February 21, 1977,
is ordered.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1980.

