

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22995  
Docket Number CL-22660

Joseph A. Sickles, Referee

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

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8630)  
that:

(a) The Carrier violated the Rules Agreement dated May 1, 1966, as amended January 1, 1971, particularly **Rules** 1, 3, 6, 11 and 16, the February 7, 1965 Job Stabilization Agreement (I.C.C. Finance Docket No. 21989 decided October 18, **1964**), among other rules and agreements, when it failed and refused **R. E. Brody**, senior **employee**, to **displace** **G. R. McMillin** on position of Lead Car **Repair** Clerk, effective September 15, 1976, at 8:00 A.M. Claimant **Brody** holds seniority date of **4/15/48** and junior **employee McMillin**, seniority date of **5/29/53**.

(b) The Carrier shall **now** be required to compensate **R. E. Brody** \$54.72 per day at the pro rata rate, establish his guarantee, plus any other compensation due **him commencing** September 15, 1976, and continuing for every work day until violations are corrected and adjustment **made**.

OPINION OF BOARD: Along with certain other positions, the position then occupied by the Claimant was abolished in September of 1976, and he filed a displacement form - notifying the Carrier of a desire to displace to the position of Lead Car Repair Clerk, then held by a junior **employee**.

The Carrier denied the request because, it asserted, **Claimant's** fitness and ability was not sufficient to **assume** the **responsibility** for coordinating **AAR** billing **operations** inasmuch as prior knowledge of such operations was required.

Thereafter, a hearing **was** requested and was held, however the Hearing Officer allowed the denial of displacement to stand.

There appears to be no question that the **Claimant** sought to displace a junior **employee** who was the incumbent of the Lead Clerk position. But, the Carrier asserts that he **did** not possess **sufficient** fitness **and** ability to perform the work requirements **and** to assume the responsibility. Moreover,

the Carrier insists that the evidence adduced at the hearing demonstrates that it did not act in an arbitrary or an unreasonable manner in denying the right to displace.

Of course, the **Organization** is of a contrary view.

The Organization stresses **Rule 6(1)** of the **agreement** between the parties which allows a thirty (30) day period in which to qualify. The Carrier states that **Rule 6(1)** does not apply unless or until the **employee** actually obtains a position through displacement. It would **certainly** appear to us, from the text of **Rule 6(i)**, that it is the very type of rule which is designed to preclude the **type** of dispute now before us:

"(i) Employees entitled to bulletined positions or **taking** positions by **displacement** will be **allowed** thirty (30) calendar days in which to qualify. If they fail they shall **assume** the status of furloughed employees except that they may bid on any bulletined position, but may not displace any regularly **assigned** employee."

It may very well be that said rule will not dispose of all disputes, however the thirty (30) **calendar** day period referred to therein should not be ignored. **Thus**, the Board is of the view that the **Claimant** should have the opportunity to qualify, **and** we will grant him said opportunity. If he qualifies, we are inclined to award him the difference in compensation which he would have received, effective September 15, 1976, had he been placed in the position.

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**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.

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Page 3

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Claim sustained to the extent stated in the Opinion ~~of~~ Board,  
above.

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

ATTEST: *A.W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1980.