

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23241
Docket Number CL-22849

Richard R. Kasher, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and station Employees
Bessemer and Lake Erie Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8732) that:

1. The Carrier violated the effective Clerks' Agreement on December 21, 1977, when it refused to permit Clerks Andrea M. Lohmann and Charlene Flack to exercise *their* seniority rights over junior employees holding Assistant Machine Operator Positions.
2. The Carrier shall now compensate Clerks Lohmann and Flack for eight (8) hours' pay each, at the pro rata rate of Assistant Machine Operator Positions, and in addition, any overtime which would have accrued to them, commencing on December 21, 1977, and continuing for each and every day thereafter, five days per week, Monday through Friday, ~~theta~~ like violation exists.

OPINION OF BOARD: Due to a force reduction effective December 20, 1977 the Claimants attempted to exercise displacement rights and bump junior employee who held the positions of Assistant Machine Operator and Relief Machine Operator. The Carrier refused to honor the displacements on the basis that the Claimants did not possess thirty (30) days prior experience on the positions.

The Organization asserted that the Carrier's refusal was unwarranted because the requirement of thirty days of prior experience was neither called for by the parties' agreement nor established by the parties as past practice. The Carrier contended that it was within its managerial prerogative to establish qualifications for displacing employees and, notwithstanding this prerogative, the measure of qualifications applicable to Machine Operators and Assistant Machine Operators (thirty days experience) had been established and uniformly applied pursuant to a verbal understanding with the Organization.

The relevant applicable Rules provide as follows:

"Rule 28(a). Seniority rights (seniority, fitness, and ability) of employees to vacancies or new positions or to perform work covered by this Agreement, shall be governed by this Agreement.

"Rule 28(b). Employees covered by this Agreement shall be in line for promotion. Promotions, assignments and displacements shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail."

"Rule 35(a). Employees entitled to advertised positions or those exercising displacement rights shall be allowed thirty (30) working days, with full opportunity, in which to qualify, and failing, shall retain all their seniority rights, may bid on any advertised positions, but shall not displace any regularly assigned employee.

Employees will be given reasonable cooperation in their efforts to qualify."

It is a principle of contract interpretation that where the agreement is silent or unclear well-established past practice will be considered. Questions of interpretation regarding displacement rights are no exception to this principle. Rule 28, as most seniority rules, does not specify any degree of fitness and ability. Therefore, the question is "have the parties established a local practice concerning employees' rights to displace on Machine Operator and Assistant Machine Operator positions?" If such practice did exist, and the Carrier adhered to it in denying the displacements, then the claim must be denied. If no practice was established, the claims must be sustained since the Claimants are entitled under Rules 28 and 35 to displacement rights based upon their seniority; and the Organization's argument that experience is not a prerequisite to the exercise of seniority would have to be sustained.

However, the record before this Board reveals that the practice of requiring a prior experience period of thirty (30) days has been followed for more than five years where the claimed positions were involved. This practice has been consistent and has been recognized by the Organization

evidenced by **the Organization's** efforts **to** have the practice reminded.

The record also reveals that the thirty (30) days prior expuience requirement is not unreasonable in view of the high degree of skill demanded by the operation of the complex data processing equipment associated with the positions in question.

In view of the well-established local practice of requiring thirty (30) days of prior experience on the positions in question and finding that this requirement is reasonable, the claims shall be denied.

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 me not violated.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1981.