

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 27134  
Docket No. CL-27327  
88-3-86-3-707

The Third Division consisted of the regular members and in addition Referee John E. Cloney when award was rendered.

(Brotherhood of Railway, Airline and Steamship Clerks,  
(Freight Handlers, Express and Station Employees  
PARTIES TO DISPUTE: (  
(The Fruit Growers Express Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10132) that:

1. The Fruit Growers Express Company violated rules 1, 3, 5 and 10, among others of the schedule agreement, when it failed to award the Agent's position in accordance with Rule 1(c) to the senior applicant, Mr. E. R. Whitehead, or in the alternative, obtained an agreement with the designated representative.

2. The Company shall now be required to assign Mr. E. R. Whitehead to the position of Agent at Birmingham, Alabama, in accordance with Rule 1(c); and further, to pay him an amount equal to but not limited to his daily rate of pay, overtime, holiday and vacation pay for the time he is withheld from his position, beginning on or about August 15, 1985."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On February 8, 1985, after learning the Agent at Birmingham, Alabama, was to retire, Claimant, a Station Agent at Memphis, Tennessee, requested he be considered for the position. Prior to being transferred to Memphis, Claimant had worked at Birmingham for 21 years. Agent W. C. Goodwin, junior to Claimant, was selected.

On October 8, 1970, the parties had entered into an agreement which provided in part:

"II. Rule 1(d)-Offices of Agents-shall be amended to read as follows:

Agents

Except as provided in the next sentence hereof, position of Agent shall be subject to the provisions of the Union Shop Agreement between the Brotherhood and the Company dated August 24, 1953. It is hereby agreed that one Agent's position at each of the following stations or areas shall be excluded from the foregoing: Jersey City, N.J.; Detroit, Michigan; Birmingham, Alabama; St. Louis, Missouri; Chicago, Illinois; Bellevue, Ohio; and Richmond, Virginia. All persons who on December 1, 1970, hold the title of Agent, Station Agent or Night Agent, shall be known as 'Incumbent Agents.'

\* \* \*

- IV. When an Agent's position (other than those excluded from Article II above), becomes vacant and there are no incumbent Agents available to fill the position, or the Company in its discretion decides not to fill the position with an Incumbent Agent, then that position will automatically become subject to Rule 1(c)."

On February 22, 1973, the parties' basic agreement was revised. Rule 1(c) of the new agreement reads:

"(c) The occupants of positions referred to in this Rule 1(c) shall be subject to the application of all the rules of this Agreement except Rules 9 and 25 and such positions shall be identified as X-2: (Agents subject to special incumbency status-see reprint of October 8, 1970. Agreement reprinted at end.)

Agencies:

Agents (Jersey City, N.J.;  
Detroit, Mich.; Birmingham,  
Ala.; St. Louis, Mo.;  
Chicago, Ill.; Bellevue,  
Ohio; and Richmond, Va.)  
Assistant Agents  
Station foremen

Vacancies in any of the positions listed in this Rule 1(c) need not be bulletined, but such vacancies will be filled by agreement between the proper officials of the Company and the designated representative of the employees when such vacancies are not assigned to the senior applicant."

The Carrier contends Article II of the October, 1970 Agreement excluded the position of Agent at Birmingham, Alabama, from coverage of the contract. It stresses that it was the position, not the individual, that was excluded. Further, the Carrier contends that position remains excluded and denies the February, 1973, revision does anything more than reiterate that exclusion. The Carrier reasons that since the exclusion applies to the position, not the incumbent of the moment, the language of Rule 1(c) of the February, 1973, agreement must be read to refer to positions "other than those excluded from Article II . . ." by the 1970 agreement.

The Organization agrees the positions enumerated in the 1970 agreement were exempted from coverage, but it insists those positions were placed within the agreement's coverage in 1973.

Rule 1(c) provides the "occupants of positions referred to in this Rule 1(c) shall be subject to the application of all the rules of this Agreement . . . ." We are unable to conclude this language means anything other than what it specifically says. The only positions referred to in the Rule are those listed in the 1970 agreement plus Assistant Agents and Station Foremen. We find nothing in the language of Rule 1(c) to suggest the drafters intended to mean that most of the small list of "positions referred to in this Rule" were to continue to be excluded. To reach that result would require us to ignore the plain and ordinary meaning of language. We are not prepared to do that. The Carrier's argument that the language of the 1973 agreement refers to positions "other than those excluded from Article II" is founded on language contained in Articles III and IV of the 1970 Agreement which it contends remains unaltered. It appears to this Board the precise meaning of Rule 1(c) is to the contrary. The Rule requires that vacancies in any of the positions referred to in the Rule are to be filled by agreement of the parties when the "vacancies are not assigned to the senior applicant." It is undisputed that Claimant was the senior applicant. The vacancy was not assigned to him and should therefore have been filled by agreement in conformity with the Rule.

The Organization requests the Carrier be required to assign Claimant to the position of Agent at Birmingham, Alabama, and also seeks a monetary award. Rule 1(c) does not mandate the position be assigned to the senior applicant. It allows the position to be filled by agreement when the senior applicant is not assigned. Accordingly a monetary award or assignment of the position will not be ordered, but the Carrier should meet with the Organization to fill the Position in conformity with Rule 1(c).

Form 1  
Page 4


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A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1988.