

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

PARTIES TO DISPUTE: (

(Kansas City Terminal Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10117) that:

1. The Carrier violated the Agreement, particularly Appendix E, Item 5, when it failed or refused to assign the senior employee to the Assistant Machine Room Supervisor and Analyst position.

2. The Carrier shall compensate Mr. Steve Lynch for the difference in pay between the Per Diem-Reclaim-Interchange Clerk and that of Assistant Machine Room Supervisor and Analyst for eight (8) hours each day, Monday through Friday, beginning with Friday, September 27, 1985 and ending Thursday, October 17, 1985. This is in addition to all pay he has received during this period of time.

3. The Carrier shall also compensate Mr. Mike Corum for any loss of pay from the rate of pay for the Per Diem-Reclaim-Interchange Clerk for eight (8) hours each day, Monday through Friday, beginning Friday, October 4, 1985 and ending Thursday, October 17, 1985. This is in addition to all pay he has received during this period of time.

4. The Carrier shall also compensate Mr. Michael Hothan for the difference in pay between the Switching and Messenger Clerk position and that of the Assistant Machine Room Supervisor and Analyst for eight (8) hours each day, Monday through Friday, beginning with Thursday, October 17, 1985 and continuing until the violation has stopped. This is in addition to all pay he has received and will receive."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

This dispute involves the claim of two employees that they were wrongfully denied the opportunity to displace the junior incumbent in the position of Assistant Machine Room Supervisor and Analyst (Programmer). Both Claimants had been displaced from their positions of Switching Clerk/Messenger and Head Equipment Clerk/Station Accountant, respectively. A third Claimant alleges he would not have been furloughed if either of the other two Claimants had been permitted to make the requested displacement.

There is no dispute that the two Claimants were not qualified in the programming aspects of the position held by a junior employee. Under Appendix E of Memorandum of Agreement dated August 14, 1957, and October 1, 1959, the Organization contends that the Carrier is required to provide training for the position. Paragraph 5 of Appendix E reads as follow:

"5. Employees assigned initially to the machine bureau and those subsequently assigned or displacing on positions therein will be trained to operate the equipment during regular working hours and will be paid the rate applicable to the position they are learning.

NOTE 1: When employees are being trained off the property, under paragraph 5 of this Appendix, Carrier may employ persons trained for such work for the period the employee is in training, without regard to the seniority provisions of the General Agreement."

Appendix E concerns arrangements made between the Carrier and the Organization in reference to the establishment of an IBM machine bureau, including rights as to reassignment and reduction-in-force restrictions.

The Organization points to the mandatory provisions of Paragraph 5 stating that employees "subsequently . . . displacing on positions" (such as the one here under review) "will be trained to operate the equipment."

The Carrier denies that Appendix E is currently in effect, a contention denied by the Organization. The Carrier argues further, however, that training "to operate the equipment" does not encompass training in the knowledge and experience required for programming.

Both parties contend that Paragraph 5 must be interpreted as written, and the Board agrees. Programming skills extend beyond the operation of the variety of equipment installed in the revised operation. While a programmer must logically be familiar with equipment operation, the requisite training for programming goes well beyond this. The Carrier contends, without contradiction, that programming may require up to a year of experience, quite apart from machine operation. The specific words of Paragraph 5 ("operate the equipment") cannot be read to mean more than is stated.

Since Paragraph 5 does not include anything beyond machine operation, the Carrier may then rely on its customary rights to judge the qualifications of employees. There was no impropriety in the denial of the requests of the two admittedly unqualified Claimants for the programmer position.


With this conclusion, it is unnecessary for the Board to resolve the issue as to whether Appendix E was or was not superseded by a later general Protective Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 20th day of July 1988.