

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Green Bay and Western Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10346) that:

1. Carrier violated the Agreement Rules, particularly the Memorandum of Agreement dated November 22, 1977, Agreement #1, which constitutes the employe's protective agreement, when on November 17, 1986, the Carrier advised Claimant Ms. Jean Patenaude that she was no longer entitled to her displacement allowance and discontinued the payment of same, and

2. Carrier shall now be required to restore Ms. Jean Patenaude's protected rate of \$2,337.73 per month, beginning with the date of November 17, 1986, the date that such displacement allowance was denied Jean Patenaude.

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 employes 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.

The basic facts in this case are set forth as follows: Claimant was occupying the position of Station Cashier at the rate of \$2,218.53 per month at the time Carrier discontinued her displacement allowance of \$119.20 per month, effective November 17, 1986. The reason for this action was that Claimant failed to submit an application for Position No. 18 - Chief Rate Clerk - Traffic Department when said position was posted for bid on October 24, 1986. It was the Organization's position that since the Chief Rate Clerk's position was a Rule 1(b) position exempt from the rules governing promotion, assignment, and displacement Claimant was not obligated to bid for a position that

was not available to her in the normal exercise of her seniority rights. The Organization also maintains that since Carrier had full discretion in assigning the Chief Rate Clerk's position, the position was not readily available to a senior employee. It points out that Section 1(a) of Article V of Agreement No. 1 (Protective Agreement) clearly details the requirements for displacement bids, specially the language requiring that an employee who is receiving a displacement allowance must attempt to obtain through the normal exercise of seniority rights, a position producing compensation equal to or exceeding the compensation of the regularly assigned position held by the employee at the time of the initial impacted force reduction. On this point and by extension, it argues that the Chief Rate Clerk's position was not a position that was available to Claimant through the exercise of her seniority and cites Docket No. 40 of the Section 13 Committee under the Washington Jobs Protection Agreement as precedent authority. Award No. 478 of Special Board of Adjustment No. 605 was also cited as supporting.

In rebuttal, Carrier contends that Claimant was required to submit an application for the Chief Rate Clerk's position, since under the terms of the Agreement No. 1, she was mandated to protect her compensatory rate under Article V Section 1(a). It also asserts that she was obligated to bid on said position as precondition for remaining in a displacement allowance status.

Initially, the parties agreed to dispense with the dispute resolution procedure contained in their Protective Agreement and to submit this claim to this Board. In considering this case, the Board concurs with Carrier's position. The adjudicated issue in Docket No. 40 was not the same as herein and dealt with the computation of the displacement allowance. In Award No. 478 of Special Board of Adjustment No. 605, the Board in that dispute made reference to Award No. 256, which held that it was not the intent of a similar provision to require an employee to engage in a fruitless attempt to bid on an exempt position. In Award No. 478, the Board held that since the applicable Job Stabilization Agreement did not contain language precluding the employee from bidding on jobs that were exempt from the promotion, assignment, and displacement rules of the Working Agreement, the employee was required to bid on the partially exempt position, when said employee had a "practical probability of being selected to fill the position."

In the case at bar, and consistent with the aforesaid decisional holding and based upon the facts of record, since the employee who was awarded the Chief Rate Clerk's position (Position No. 18) was junior in seniority to Claimant there was a reasonable expectation that her bid would have been seriously considered. There are no compelling indications that her bid would have been fruitless.

A W A R D

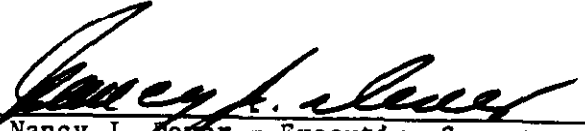
Claim denied.

Form 1
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Award No. 28829
Docket No. CL-28731
91-3-89-3-112

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1991.