

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the Carrier violated the Agreement.

- (1) When on October 4, 1946 it allowed Mr. Thomas Belyew to exercise displacement rights on position of Assistant Foreman, held by Mr. Dan Davis, after the time for the exercise of displacement rights had expired.
- (2) That Mr. Dan Davis be restored to his position as Assistant Foreman and be compensated for any wage loss suffered as a result of this displacement, and any employees at the bottom of the seniority list, furloughed because of this displacement, be compensated for wage loss thus sustained.
- (3) That Elizabeth Boyd or any other furloughed employee eligible to the extra work as Clerk in the Stationmaster's Department be compensated for any loss in wages, because of the employment of Mr. Belyew in that capacity after September 10, 1946 to and including the last date Mr. Belyew worked as extra clerk in that department.

EMPLOYEES' STATEMENT OF FACTS: Mr. Thomas Belyew was furloughed as a clerk in the Stationmaster's Department on September 5, 1946, the date he ceased to hold a regular assigned position, and there being five days relief work in that department each week Mr. Belyew was permitted to perform such extra work until October 4, 1946, though he lost all rights in that department after September 10, 1946 by reason of his failure to file his name and address in writing with the Stationmaster and the Local Chairman within five (5) days of date reduced to the furloughed list as required by Rule 17.

Local Chairman, Mr. Ferguson, called the attention of Stationmaster, Mr. R. F. O'Neill, to employee Belyew's failure to comply with the second paragraph of Rule 17, and Superintendent, Mr. Henry Miller, Jr., wrote us on September 30, 1946 and furnished us with new Seniority Roster covering the Clerks in the Stationmaster's Department and the name of Thomas Belyew was eliminated.

Copy of letter and Seniority list dated September 27, 1946 are attached as Employee's Exhibit "A".

Mr. Belyew held the position of clerk in the Stationmaster's department under the provisions of the second paragraph of Rule 20, having transferred

"It is understood that the words 'exhaust all their seniority rights' be clearly defined to mean all rights to a regular position and does not force the transferred man to work extra in the second department if his rights in the original department are sufficient to hold a regular position there." In other words, an employe does not have to but may choose to remain in the second department and protect extra work in that department if he so desires. In Mr. Belyew's case there was five days' extra work per week in the Train Information Bureau, there being five regularly assigned positions in that department and he chose to protect this extra work rather than return to his original department, which was entirely proper under the interpretation referred to in this paragraph. Therefore, there is no basis for a claim from any employes junior to him in that department. Such a claim, even if properly before the Board, would have to be declined.

The Employes have failed to establish the violation of any rules of the agreement and, lacking that prime requisite, no claim of any nature can be sustained. Bear in mind that this case is similar in principle to that covered by Award 3388 of this Division, recently decided in our favor.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arises out of the Terminal Board's contention that the Carrier violated their Agreement when, on October 4, 1946, it permitted Thomas Belyew to displace Dan Davis as Assistant Foreman. It bases this violation on its contention that the displacement rights of Thomas Belyew had expired at the time he was permitted to displace Davis. It asks that Davis be restored to this position and that he and all others adversely affected thereby be compensated for any wage loss they may have sustained by reason thereof.

Claim is also made in behalf of Elizabeth Boyd or any other furloughed employes eligible to do extra work as a Clerk in the Stationmaster's Department because of the employment of Belyew in that capacity after September 10, 1946.

The record establishes that Thomas Belyew had seniority in the Mail and Baggage Department of the Carrier as of August 7, 1923; that on June 4, 1943, he transferred to a position in the Train Information Bureau under the Stationmaster and obtained seniority in that department as of that date. He also retained and continued to accumulate seniority in the Mail and Baggage Department under Rule 20 of the Agreement.

On September 5, 1946, Belyew was furloughed in the Stationmaster's Department and ceased to hold a regularly assigned position therein although thereafter, up until September 29, 1946, he performed five days per week of extra relief work therein. Belyew, after he was reduced to the furloughed list, failed to file his name and address in writing with the Stationmaster and Local Chairman within five days, as required by Rule 17, and thereby forfeited his seniority rights in that department. On October 4, 1946, Belyew displaced claimant Ben Davis as an assistant foreman in the Mail and Baggage Department. Davis thereupon displaced a baggage handler although he had sufficient seniority to have enabled him to displace or bid in several positions as an assistant foreman.

We find the manner in which the claim was handled on the property was proper, in fact, the principal claim here made arose after the organization had informed Carrier of Belyew's failure to file his name and address in accordance with Rule 17. Likewise the claim was filed within time. In view of certain statements made by the Carrier it should be stated that it is the Carrier's duty to see that its actions are in accord with the rules of the parties' Agreement.

As to the claim in behalf of Elizabeth Boyd, or any other eligible furloughed clerk in the Stationmaster's Department, we think the record clearly establishes that when Belyew failed to comply with Rule 17 of the Agreement, which required him to file his name and address in writing with the

proper official of the Carrier and the Local Chairman, he forfeited all seniority rights therein and, after September 10, 1946, he was entitled to perform the work. It should have been given to employees entitled thereto by reason of their seniority and Carrier violated the rules of the Agreement in failing to do so.

As to the claim of Davis that Belyew improperly displaced him in the Mail and Baggage Department it appears that when Belyew left that department on June 4, 1943, that he retained his seniority therein by the provisions of the second paragraph of Rule 20 of the parties' Agreement. This paragraph of the rule further provides:

"In the event such employees are disturbed on account of force reductions, or the exercise of seniority, they must exhaust their rights in the new seniority district before being permitted to displace junior employees in the old seniority district."

By the Memorandum of Agreement of the parties dated January 16, 1946, it was agreed in the interpretation of Rule 20 that:

"Transferred employees must exhaust all their seniority rights in the new department, before they can return to their original department and exercise their rights. It is understood that the words 'exhaust all their seniority rights' be clearly defined to mean all rights to a regular position, and does not force the transferred man to work extra in the second department, if his rights in the original department are sufficient to hold a regular position there."

Carrier, by this interpretation, says there is no doubt but that an employee can remain in the second department protecting extra work if he so desires but cannot be forced to do so. We are here called upon to answer that question for by his own conduct Belyew exhausted his rights in the Stationmaster's Department when he forfeited his seniority therein as of September 10, 1946. Thereafter he could neither rightfully continue to do this work nor could the Carrier properly assign it to him. He was of that date required to assert his rights of displacement in the Mail and Baggage Department within the time as provided by Rule 17, which is as follows:

"Employees displaced whose seniority rights entitle them to a regular position, shall assert such rights within ten (10) days."

Having failed to do so he is only entitled to bid on a bulletined position and may not displace any regularly assigned employee. See letter of understanding dated January 21, 1946, wherein it is stated:

"I also agreed with General Chairman Schmidt that employees failing to exercise their displacement rights, as indicated above, will retain all their seniority rights, may bid on any bulletined position, but may not displace any regularly assigned employee."

The Carrier's contention that Davis, because of his seniority, could have secured a better position than the one to which he exercised his right of displacement is immaterial for, as said in Award 637, had he done so would only result in a claim for a larger loss by some other employee.

For reasons stated we find the claim should be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carried 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of March, 1948.