Award No. 4533
Docket No. CL-4436

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that the Carrier did not properly apply rules of Agreement effective October 1, 1938 (reprinted as of March 1, 1944 to include all rules changes, memorandum of understanding, amendments and interpretations subsequent to October 1, 1938).

1. When it denied to Mrs. P. E. Hopper, Clerk in the Office Auditor Passenger Accounts, Atlanta, Georgia, the right to displace Mr. W. H. Trentham, an employe junior to Mrs. Hopper temporarily filling clerical position No. 323 within the same office and seniority district account absence of the regular assigned employe, Mrs. M. L. Bynum, who was on leave of absence due to illness.

2. That Mrs. P. F. Hopper be reimbursed for the loss of earnings representing the difference between what she was paid for services performed as a clerical worker on position No. 377, rate $8.99 per day, to which she was assigned by Carrier on denial of her request for permission to exercise displacement rights upon position No. 323, and what she would have earned as a clerical worker on position No. 323, rate $9.87 per day, for the period December 16, 1947 to January 15, 1948."

EMPLOYES' STATEMENT OF FACT: Mrs. P. F. Hopper, claimant, is an employe of the Carrier as a clerical worker in the office of the Auditor Passenger Accounts, Atlanta, Georgia. Her seniority date is April 16, 1945.

Mr. Trentham is also an employe of the Carrier as a clerical worker in the same office. His seniority date is June 16, 1945—junior to Mr. Hopper.

Mrs. M. L. Bynum is an employe of the Carrier as a clerical worker in the same office. Her seniority date is January 13, 1943. She is senior to both Mrs. Hopper and Mr. Trentham.

As of December 15, 1947—

Mrs. Hopper was assigned to position No. 337, rate $9.48 per day.

Mr. Trentham was temporarily assigned to position No. 323, rate $9.87 per day, due to Mrs. Bynum being absent on leave account illness.

The interpretation you have agreed to place on this matter permitting such displacements is satisfactory to me and I have signed the carbon copy of your letter and am enclosing it herewith as per your request."

It is obvious therefore that the understanding related solely to the right of a clerical employe to whom a displacement right had accrued under agreement rules to displace a junior clerical employe who had been furloughed but who had been recalled by the officer in charge and placed on a temporary vacancy **under the provisions of Rule 4 (g)**. Then too, Rule 4 (g) contains the exceptions, "Except as provided * * * in Rule 5-(d) * * *" and in Assistant Vice President Mackay's letter of December 26, 1939 to the General Chairman it was stated that the displacement of a junior employe filling a temporary vacancy under Rule 4 (g) was permissible provided it in no way affected the Company's rights under Rule 5-(d). To permit a clerical employe to displace a junior employe placed on a temporary vacancy at the discretion of the officer in charge would affect the Company's rights under Rule 5 (d). To permit such displacement would therefore be contrary to the specific provisions of the rule.

Under the agreement, Rule 5 (d) takes precedence over all others in the matter of filling temporary vacancies of thirty days or less or temporary vacancies up to ninety days, when occasioned by the granting of leave of absence or absence on account of sickness. Under it the officer in charge is permitted to blank the position of the absent employe for all or any part of the period he is absent. However, if he elects to fill it for all or any part of the period of the vacancy he is privileged to do so at his discretion. He has liberty of action, freedom in the exercise of judgment, undirected choice, all of which is essential to accomplish the purpose for which the rule was designed, i. e., to avoid disturbing and disorganizing the whole office or force when an employe is absent for a brief period and at the same time maintain the efficiency of the office or force.

In this connection there would not be any point in permitting an employe desiring to work full time to displace a junior employe placed on a temporary vacancy at the discretion of the officer in charge, because the rule specifically provides the position may be blanked for all or any part of the period of the vacancy. The officer in charge may elect to fill the position on a part time basis, say, for 1, 2 or 3 days a week or for every other week. Surely an employe standing for a regular assignment would not desire the position in a situation of that kind.

In the instant case Clerk Trentham was placed on the temporary vacancy at the discretion of the officer in charge under the provisions of Rule 5 (d), and under the agreement was, therefore, not subject to displacement from such vacancy by a senior clerk having a displacement right. He was **not** a furloughed employe placed on the temporary vacancy. Therefore, the understanding of December 26, 1939, cannot have any application. While Mrs. Hopper, the claimant, had a displacement right after being displaced from a permanent assignment by Miss Bradley, she did not have the right to displace on the temporary vacancy filled at the discretion of the officer in charge under Rule 5 (d). The right she had was to displace on a permanent assignment, which she did, when she displaced Mr. Barrow, and that was the only right accruing to her.

Mrs. Hopper, not being denied any right accruing to her under the agreement, is not entitled to pay for the time claimed.

For all the reasons given, the claim should be denied and respondent respectfully requests that the Board so decide.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is an employe holding a clerical position in the office of Auditor Passenger Accounts at Atlanta, Georgia, with a seniority dating of April 16, 1945. Mrs. M. L. Bynum is regularly assigned to Position 323 in the same office with a seniority dating of January 13, 1943.

Mrs. Bynum was on sick leave as of December 15, 1947. Her position was filled by W. H. Trentham who was a clerk in the same office, junior in seniority to Claimant. On December 16, 1947, Claimant was displaced from her position and sought to displace Trentham. The Carrier refused to permit her to do so and she now claims reimbursement for loss of earnings resulting therefrom.

The dispute arises over the interpretation to be given to Rule 5 (d) and Rule 4 (g), current Agreement, and an agreed upon interpretation under date of December 26, 1939. The pertinent parts are as follows:

"Temporary vacancies of thirty (30) days or less, or temporary vacancies up to ninety (90) days, when occasioned by the granting of leave of absence or absence on account of sickness, may be blanked for all or any part of the period of the vacancy; should such position be filled it may be done at the discretion of the officer in charge.

Note: When such temporary vacancies are filled, either for the entire period or portion thereof, as provided in Rule 4-(g), preference for such work shall be given to employes holding seniority in group or class in which vacancy occurs, but this privilege does not extend to employes in other groups or classes unless an employe holds seniority in the group or class in which vacancy occurs."

Rule 5 (d), current Agreement.

"Understood that a furloughed employe placed upon an extra position, as provided above, may be displaced therefrom during the period of the vacancy only by an employe to whom a displacing right has accrued under schedule rules."

Rule 4 (g) (5), current Agreement.

"My understanding is that the cases to which you refer in the third paragraph of your letter were cases where temporary vacancies were being filled at the discretion of the officer in charge under the provisions of Section (d), Rule 5, of the agreement, and for this reason the clerical employes to whom displacement rights had accrued were not permitted to displace the junior clerical employes who were filling the temporary vacancies. The rulings were, in my opinion, in accord with the technicalities of the rules. However, I am agreeable to interpreting the rules in question to permit such displacements, provided you agree that my so doing in no way affects the Company's rights under Rule 4-(e), Rule 4-(g) (1), (2), (3) and (6) and Rule 5-(d)."

Letter Agreement of December 26, 1939.

It is clear to us that under Rule 5 (d) the Carrier can fill temporary vacancies occasioned by leaves of absence or sick leave, or it may blank them, as it sees fit. The note attached to the rule permits the Carrier to use its own judgment as to the employe to be used in case it elects to fill the vacancy, except that it must be an employe holding seniority in the class or group in which the vacancy occurs, or an employe in another group or class who also has seniority in the class or group where the vacancy existed. There is no requirement in this rule that the senior employe is to be assigned; in fact, the inference is that he need not be.

Rule 4 (g) (5) provides that a furloughed employe placed upon an extra position can be displaced by a senior employe to whom a displacing right has accrued under the schedule agreement. It does not authorize displacement by senior employes generally.

By virtue of the understanding set forth in the Letter Agreement of December 26, 1939, the effect of Rule 4 (g) (5) was broadened to permit the displacement of junior clerical employes as well as furloughed employes filling temporary vacancies, by a senior employe having a displacement right. The Claimant in this case had a displacement right. She was senior to Trentham and was entitled to displace him by virtue of the rules cited and the under-

standing contained in the letter of December 26, 1939. An affirmative award is in order.

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 Employes involved in this dispute are respectively carrier and employes 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 was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of August, 1949.