

Award No. 4619
Docket No. CL-4560

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

John M. Carmody, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Management violated the provisions of the Rules Agreement, effective May 1, 1942, Rose Lake, Illinois, Yard Office, St. Louis Division, when Clerk J. H. Eggleston was required to report and demonstrate his qualifications on May 5, 1946.

(b) Clerk J. H. Eggleston be allowed three hours' pay in accordance with Rule 4-A-6 on account of this violation. (Docket W-459)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees of which the claimant in this case is a part, and the Pennsylvania Railroad Company (hereinafter referred to as the Brotherhood and the Carrier, respectively.) There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and the Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, and which has also been filed with the National Railroad Adjustment Board.

The claimant in this case is an employee holding a regular position covered by the Scope of that Rules Agreement having seniority standing in Group 1 on the St. Louis Division of the Carrier.

This dispute has been progressed by means of a joint submission which is attached as a part of this Statement of Facts and marked Employees' Exhibit "A". Under date of September 10, 1948, the Carrier's General Managers wrote the General Chairman as follows:

"The facts in this case are summarized, as follows:

"The Claimant, J. H. Eggleston, returned from Military Service on March 28, 1946, and elected to exercise his seniority on Position B-54-G in Rose Lake Yard Office. After working this position for two (2) weeks, he was disqualified, and for the succeeding two (2) weeks posted on Position FS-402-F, Rose Lake Yard Office.

"On Saturday, May 4, 1946, Mr. Eggleston notified the Assistant Train Master that he was ready to take over Position FS-402-F, on which he had been posting, and would begin work on that job on third trick on the succeeding day, Sunday, May 5, 1946. The Assistant Train

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreements between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that there has been no violation of the applicable Agreement and that the Claimant is not entitled to the compensation which he claims.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this case are set forth in a Joint Statement of Agreed Upon Facts:

"The claimant, J. H. Eggleston, entered the service as a Clerk on February 28, 1942, and worked as a clerk until April 26, 1943, on which date he was granted a leave of absence for Military Service. The claimant returned to railroad service on March 28, 1946, and exercised his seniority by displacing a junior employee on clerical position B-54-G, on the second trick at Rose Lake, Illinois. On April 15, 1946, the claimant was disqualified and was removed from position B-54-G, effective April 15, 1946. Subsequently, the claimant posted on clerical position FS-402-F on the third trick at Rose Lake for a period of about two weeks. On May 4, 1946, the claimant informed the Assistant Train Master that he (the claimant) had posted on Position FS-402-F, and would exercise his seniority by displacing a junior employee who was then the occupant of position FS-402-F. Immediately upon receipt of this information from the claimant, the Assistant Train Master notified the claimant to be present at the Yard Office on the following day, May 5, 1946, for the purpose of demonstrating his ability to properly handle the work assigned to position FS-402-F. The claimant reported at the Yard Office on the morning of May 5, 1946, and demonstrated to the satisfaction of the Assistant Train Master that he (the claimant) was qualified to handle the work assigned to position FS-402-F, and the claimant was permitted to exercise his seniority on that position.

"A claim was made by J. H. Eggleston for three (3) hours under Rule 4-A-6(a) for being required to report and demonstrate his qualifications on May 5, 1946. This claim was denied."

It will be observed that the claim here was made for violation of Rule 4-A-6(a). In its "Position of Employees" we find "The issue in this case involves the proper procedure to follow by an employee in the exercise of seniority under provisions of Rule 3-C-1 and 3-H-1."

In its submission the Organization says "The sole question to be decided in this case is whether or not the Management violated the provisions of the Rules Agreement, particularly Rules 2-A-3, 3-H-1 and 4-A-6."

Taking them in order and on the facts as shown and without citing the record in detail, we conclude that there was no violation of Rule 2-A-3. Claimant, after an absence in the Military Service, returned and was permitted to exercise seniority on position B-54-G. After approximately two weeks he was disqualified on this position, posted on FS-402-F and, after an examination by the Assistant Train Master, was permitted to exercise his seniority in that position the day after he said he was ready.

This sequence of events clearly disposes of any claim that Rule 3-H-1 was violated.

This brings us to Rule 4-A-6. Merely to state this rule seems to us to dispose of the instant claim under it. Obviously this rule is intended to cover, and properly should cover, notice or call to do productive work or render productive service in the interest of the Carrier. It is an investment from which the Carrier gets or seeks to get direct benefit. Claimant here was not producing anything of value for the Carrier. He had said he was ready for a position which he had posted; the Assistant Train Master, working a different trick, wanted to check on his qualifications before assigning him permanently to the position. In the light of claimant's most recent history, this was not an unreasonable request. We conclude it was not a violation of Rule 4-A-6, nor, in fact, can we find that it was a violation of the special agreement of March 15, 1945, introduced into the record. There is no provision in that agreement for compensation.

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 carrier 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 there was no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of October, 1949.