Award No. 4674
Docket No. CL-4748

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood and Steamship Clerks, Freight Handlers, Express and Station Employes on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When on January 8, 9, 10, 11, and 12, 1949 at Coffeyville, Kansas, it utilized a regularly assigned Janitor, W. A. Jordan, hours 6 A.M. to 10 A.M.; 11 A.M. to 3 P.M., rate $7.28 per day, six days per week, listed upon the General Superintendent's Western District Group 2 Clerks' seniority roster, where his job of Janitor attached with a seniority date of February 11, 1946, to perform the duties of a regularly assigned Messenger, W. L. Vaughn, absent account of illness, on Station and Yards Group 2 seniority district and roster whose seniority date on that roster is June 6, 1947, and

2. Failed and refused to utilize L. N. Petway, Baggageman, Station and Yards seniority district and roster with a seniority date of April 4, 1913, regularly assigned hours 1 A.M. to 9 A.M., who was available, ready and willing to work in lieu of crossing seniority district and roster lines and using a regularly assigned Janitor on the Western District General Superintendent's roster, Group 2, in violation of the Agreement to fill the temporary vacancy on position of Messenger on the Station and Yards Group 2 seniority district and roster.

3. Baggageman L. N. Petway shall be paid wage loss suffered:

January 8	—8 hours at punitive rate $1.365 per hour	$10.92
January 9	—3 hours at punitive rate $1.365 per hour	4.10
January 10	—8 hours at punitive rate $1.365 per hour	10.92
January 11	—8 hours at punitive rate $1.365 per hour	10.92
January 12	—8 hours at punitive rate $1.365 per hour	10.92
		$47.78

which he is justly entitled to be paid account Carrier's action in violation of the Agreement.

EMPLOYES' STATEMENT OF FACTS: At Coffeyville, Kansas on the claim dates involved in our Statement of Claim, the Carrier maintained on its

moted. This is the only privilege to which the employes could justify a protest if rights were not exhausted, and Jordan did not exercise and was not granted such privilege.

Notwithstanding the exhaust requirements of Rules 4(d) and 4(e) are strongly modified by the condition, "if displaced," the employes are contending the provisions are all inclusive and the Carrier may not use an employe assigned in one group and district for work of any kind under any circumstances in a lower group and district where he holds seniority rights. This contention seeks to restrict the Carrier from utilizing for emergency, extra and relief work, employes who have established and retained seniority rights to such work, and compel the payment of punitive rates to other employes for the performance of such work.

To restrict the use of employes to service within the boundaries of one seniority district and group in which they are assigned, and put to sleep and render ineffective rights they have in other districts and groups, would in many cases estop the Carrier from carrying out agreement provisions that have been established by bargaining and negotiation. To hold that employes cannot be used across seniority lines under any circumstances would, in many cases, compel use of some employes on rest days at punitive rates, rather than such employes accepting the day off, when we are ready and able to relieve them.

There have been many awards issued on the matter of seniority lines. The employes call attention to 753 and 3211. We will mention also 609, 610, 612, 630, 631, 637, 649, 718, 736 and 1685. These are all similar to 753 and 3211 and they all sustained the employes, but they do not cover circumstances such as prevail in this Jordan-Petway case. They all involve the taking of work from employes in one seniority district and group and giving it to employes in another seniority district and group or to employes not covered by the agreement at all. Nothing of that kind was done in the instant case. Janitor Jordan held unrestricted rights to the work he performed as Messenger January 8, 9, 10, 11 and 12 for which Baggageman Petway is making claim.

It is the position of the Carrier that there is no agreement provision in effect on which the contentions of the employes in this case can be sustained.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier maintained at Coffeyville, Kansas, a clerical force on its Station and Yards seniority district and it also there maintained a clerical force on its Western District Superintendent's seniority district.

Rule 4(d) of Agreement of July 1, 1943 provided:

> "(d) Employes voluntarily transferring or who are promoted from station service to positions on the Superintendent's roster will retain and continue to accumulate seniority in station service while occupying positions carried on the Superintendent's roster, but their seniority standing on the Superintendent's roster will be that as of the date promoted thereto following assignment to a bulletined position in accordance with the provisions of Rule 3(d). If displaced, they shall be required to exhaust their seniority rights in the group and seniority district in which employed on the Superintendent's roster before being permitted to exercise rights over employes in the group or seniority district in station service from which promoted."

A messenger, assigned hours 9 AM-1 PM; 2 PM-6 PM, six days per week, employed and holding seniority in Group 2, Station and Yards seniority district, was off duty on account of illness January 8 to 12, 1949. To perform the messenger's duties the Carrier utilized Jordan, a janitor, hours 6 AM-10 AM; 11 AM-3 PM, rest day Sunday, employed and holding seniority date February 11, 1946 in Group 2, Western District Superintendent's seniority district, to which he had been promoted from the Station and Yards district, where he

retained seniority date of January 2, 1945, under Rule 4(d). During the period involved he worked his regular position from 6 AM to 9 AM and then took the duties of messenger until 6 PM.

Claimant Petway was a baggageman, assigned hours 12 MN-4AM; 5 AM-9 AM, rest day Saturday, employed and holding seniority date April 4, 1918 in Group 2, Station and Yards seniority district.

Claimant based his demand upon the facts:

1. That the janitor assigned to the work was employed and held seniority in another district and had not exhausted his seniority rights therein as required by Rule 4(d) before he could exercise any rights in the Station and Yards district.

2. That even if held permissible to cross seniority district lines, still Claimant had superior right to the work by virtue of his seniority of many years over the employe assigned to the work.

The Carrier asserted:

1. That Claimant had previously declined overtime work. This, of course, is immaterial.

2. That he was not available for the overtime work. This was not supported by the evidence, and not attempt was made to call him when the vacancy occurred.

3. In avoidance of Claimant's seniority preference, Carrier referred to Memorandum of Agreement effective December 1, 1941, providing method of filling vacancies in cases of illness and other stated cases. The first three methods there provided were admittedly here inapplicable, but reliance was placed on the fourth method named for filling such vacancy:

> "4. By available regularly assigned employe, whose hours are substantially the same where it is necessary to move such employe.

This provision bases right to fill the vacancy on hours of work rather than seniority and was said to apply here in favor of Jordan. Further, that Jordan was "an available regularly assigned employe" even though assigned in another district, because of his reserved seniority under Rule 4(d), and that he was not required first to exhaust his seniority rights in the district where now employed before being given this assignment for the reason that such restriction applies only "if displaced" by another employe.

Claimant answered that the provision quoted from the Memorandum applies only to a "regularly assigned employe" on the Station and Yards seniority district, where the vacancy is to be filled; that Jordan's reserved seniority rights in the Station and Yards district were dormant, and that he could not exercise any rights in that district until he had exhausted his seniority rights on the district in which employed. In this interpretation we concur.

The pertinent sentence of Rule 4(d) as here involved, is:

> "If displaced, they shall be required to exhaust their seniority rights in the group and seniority district in which employed on the Superintendent's roster before being permitted to exercise rights over employes in the group or seniority district in station service from which promoted."

Seniority district limits are basic and jealously guarded. We cannot believe that it was intended by the sentence quoted to permit a promoted employe utterly to disregard the district lines and enjoy immediate and unconditional rights in the abandoned district, whenever he or the Carrier might so desire, except only in the event he was displaced by some other employe. Under such interpretation the exception would not make sense. Thereunder, an employe

when quitting his position voluntarily or by desire of the Carrier would enjoy rights denied him when forced from his position by another employe. Such interpretation is logic in reverse. As we must construe that sentence, the word "displaced" is not limited in meaning to displacement by some other employe, but includes displacement by reason of position abolished or reduction of force, as the word is used in Rule 14(c) of the Agreement, which reads: "Employes when actually displaced account position abolished or reduction of force, or through the exercise of seniority by senior employes" and includes displacement by act of the Carrier, as here involved, or by any other cause. Such is the common meaning of the word, and its application here gives sense and reason to the rule.

It was necessary, then, for Jordan to exhaust his seniority rights in the Superintendent's district before he could be permitted "to exercise rights over employes" in the district from which promoted, and in taking over the vacancy Jordan was permitted to exercise a right, to-wit: the right of appointment under the Memorandum of Agreement of December 1, 1941, over Claimant, who was such an employe. This was a violation of the Agreement and the claim must be sustained.

However, we think, pursuant to the frequently adopted rule, that the penalty here assessed should be in the amount, only, which would have been paid to the regular employe on the position.

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 Employes involved in this dispute are respectively carrier and employes within the meaning 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

Claims sustained in the amount as indicated in the concluding sentence of the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of December, 1949.