Award No. 5279
Docket No. DC-5195

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee.

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES

THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim Joint Council Dining Car Employes, Local 385, on the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, for and on behalf of Norbert Caillouet, Waiter, that he be compensated for net wage loss suffered on March 23 and 24, 1949, as a result of Carrier's refusal to permit Mr. Caillouet to exercise his seniority in accordance with Rule 6, Paragraph (f) of the current agreement.

EMPLOYES' STATEMENT OF FACTS: Claimant had completed his regular assignment as No. 4 Waiter on Carrier's train 5 and 6 on March 20, 1949. On that date his assignment was to leave Chicago on Train 5, March 23. On March 21, 1949, the day after Claimant's arrival in Chicago, Train 6, Diner No. 124, the position of No. 4 Waiter on Train 5 was abolished. While Carrier states it made numerous attempts to reach Claimant by telephone on March 21 and March 22, it did not notify Claimant until 3:20 P. M. March 22 when it sent him the following telegram: "Do not report for run tomorrow. Contact office." This telegram was received by Claimant about 4:00 P. M., March 22.

Claimant interpreted the telegram to mean that he should report to the office "tomorrow" instead of reporting for run. On March 23 Claimant reported to protect his assignment at 6:00 A. M. because he was confused as to Carrier's instructions. At that time he was advised for the first time that No. 4 Waiter's position was abolished. Claimant sought to exercise his seniority to displace No. 3 Waiter, who was junior to him. It was necessary for Claimant to exercise his seniority then and there because the Carrier's office did not open until 8 A. M. Carrier's signout man refused Claimant's request and referred him to the Carrier's office. When the office opened Claimant was granted permission to displace the No. 3 Waiter, effective March 25, 1949. Claimant lost compensation for March 23 and 24.

POSITION OF EMPLOYES: Employes contend that the instant claim should be allowed by this Board because Rule 6 (f) of the current agreement insofar as it is applicable provides: "When forces are reduced, seniority will govern. . . ." Rule 6 (k) provides: "A regularly assigned employe who is displaced may exercise seniority, in writing, within ten (10) days from date affected to displace any junior employe in a class in which he holds seniority." The meaning of the quoted schedule rules is too clear for argument. Employes contend that Carrier failed to meet its obligation in two respects:

(1) It did not properly or timely notify Claimant of the abolishment of his regularly assigned position.

that he could not be contacted by telephone and principally because he did not contact the office immediately upon receipt of the telegram at 4 P. M. March 22nd.

The Carrier states the claim is not supported by the schedule rules and respectfully requests that it be declined.

OPINION OF BOARD: This claim involves the seniority rights of a waiter under Rules 6 (f) and (k).

Claimant was the regular occupant of No. 4 waiter's position assigned to go on duty 6:00 A. M. for a trip out of Chicago scheduled to leave 10:30 A. M. March 23. He had completed a run March 20 and the following day, March 21, the Carrier abolished the No. 4 waiter's position.

The Carrier made numerous attempts to reach Claimant by telephone March 21 and 22 without success and finally telegraphed him at 3:20 P. M. March 22 as follows:

"Do not report for run tomorrow. Contact office."

Claimant received the telegram at 4:00 P. M. March 22. He did not "contact office" but reported for duty on his regular assignment at 6:00 A. M. March 23.

Thereupon, when advised that his position had been abolished, he sought to displace the occupant of the No. 3 waiter's position who was junior to him and who had also reported for duty.

In these circumstances, the Carrier refused to permit Claimant to exercise his displacement rights. Hence the claim.

The provisions of the Agreement relied upon are:

Rule 6 (f):

"When forces are reduced, seniority will govern. When forces are increased, employes will be returned to the service in accordance with their seniority provided they file their name and address with the Superintendent or designated officer at the time of reduction of forces, advise promptly of any change in address and return to service within ten (10) days after being notified by mail or telegram sent to the address last given; failure in this respect will terminate seniority. Employes who, because of reduction in forces, perform no service for a period of one (1) year will forfeit seniority."

Rule 6 (k):

"A regularly assigned employe who is displaced may exercise seniority, in writing, within ten (10) days from date affected to displace any junior employe in a class in which he holds seniority."

FIRST. If Claimant was entitled to exercise his displacement rights under Rule 6 (k) after the junior employe had reported for duty, the claim must be sustained on that ground and it becomes unnecessary to consider what his rights were under Rule 6 (f). We therefore consider this question first.

Rule 6 (k) does not say how displacement rights shall be exercised, except for the 10 day requirement and the requirement of a writing.

The fact that the 10 days runs "from date affected" gives some indication, if taken literally, that the right can be exercised instanter the moment the senior employe is displaced.

However, the requirement of a writing is a requirement of notice to the Carrier, which implies the lapse of a reasonable time between the giving of notice and the actual exercise of the right. How long that time is must depend on the circumstances. Here, we conclude that Claimant was not entitled to exercise his displacement rights at least until the Carrier had been afforded sufficient time within which to notify the junior employe, who was to be displaced, not to report for duty.

This conclusion leaves us with the question whether Rule 6 (f) was violated, for if it was, as the Joint Council contends, then Claimant could have displaced in time to afford the Carrier sufficient time to notify the junior employe not to report for duty.

SECOND. Rule 6 (f) contains elaborate provision for notice when forces are increased, but none when forces are reduced which was the case here. Nevertheless, notice was necessary in the nature of the situation because, by virtue of his assignment, Claimant was under a standing order to report for duty at 6:00 A. M. March 23 which he would have been justified in obeying in the absence of notice (compare Awards 4841 and 4200). No particular form of notice was necessary (compare Award 5029); and in the view we take, the telegraphic notice was sufficient. The message cancelled the assignment for March 23 by telling Claimant not to report for duty and, when he did so, he was on a frolic of his own. The message was not made ambiguous by failure to disclose the reason for the cancellation. But if this was an ambiguity, it could have been resolved by "contacting office" which Claimant was solicited to do, but did not, although he had an hour within which to do it.

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 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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of March, 1951.