

Award No. 5711
Docket No. CLX-5656

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Angus Munro, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INC.

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

(a) The agreement governing hours of service and working conditions between the Railway Express Agency and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective October 1, 1940 and the Memorandum of Understanding August 6, 1942 were violated through failure to permit C. W. Hill to exercise displacement over a junior employe on the Portland, Oregon agency seniority roster and establish a seniority date thereon;

(b) He shall now be permitted to do so and given a seniority date of May 10, 1943 and rank next above the name of K. Gustafson; and

(c) He shall be compensated for monetary losses sustained retroactive to and including July 16, 1949.

EMPLOYEES' STATEMENT OF FACTS: C. W. Hill has a seniority date on the Eugene, Oregon agency roster of September 26, 1942 and on the Oregon Division Train Service Roster of November 14, 1942. At the time of entering military service, April 22, 1943, he occupied a train service position in the latter seniority district. He was discharged from military service September 29, 1945 and resumed work as a train service employe in the Oregon Division November 1, 1945.

September 7, 1946 Hill sought to exercise displacement over some junior employe in the Portland, Oregon agency seniority district who had acquired a seniority date on that roster while he was in military service. It was determined that a position in this seniority district was awarded to a new employe, K. Gustafson May 10, 1943. This request was denied by General Agent H. E. Albert on the grounds that request for such displacement had not been presented within time limits provided for the exercise of seniority.

September 8, 1946 Hill sought to exercise displacement over some junior employe in the Coos Bay, Oregon agency seniority district who had acquired a seniority date on that roster while he was in military service. It was determined that a position in this seniority district was awarded to a new

ment as to why the provisions of the Agreements should not be enforced. Rule 11 clearly calls for an employe returning after an absence to make a decision as to whether he will return to his 'former position' or exercise his seniority rights 'to any positions bulletined during his absence.' The Military Agreement just as clearly provides for restoring a returning veteran to his former position (including rights to promotion) but **all in accordance with the then existing rules of the schedule agreement.**

* * * *

"Here the returning veteran did return to his former position. He thereby made his decision. It was a violation of the Agreement to permit him to take the Derrick Operator position a month and a half later."

The finding of the Board in Award 4134 sustaining the claim of the Organization that the Carrier violated the agreement in permitting a veteran, who had exercised his election to return to his former position, to displace a junior employe six weeks later, is wholly determinative of the issue in the instant case. Messenger Hill exercised his election to return to his former position on November 2, 1945, and not six weeks but ten months later sought to establish seniority in two separate seniority districts in the manner set forth in Carrier's Statement of Facts, first at Coos Bay and then at Portland. The claim is clearly unsupported by any rule of the Agreement between the parties effective October 1, 1940 and the Memorandum of Understanding of August 6, 1942, and should be denied in its entirety.

All evidence and data have been considered by the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: Employee Hill was a holder of a train service job on the Oregon division roster, with a seniority date of November 14, 1942, on April 22, 1943. From the last above mentioned date until September 29, 1945, said Hill was a member of our armed forces. On November 1, 1945, he returned to active duty with Carrier in the above mentioned job.

Other employes of Carrier on the last above mentioned date included one Gustafson with a seniority date of May 10, 1943, on the Portland Agency roster and one White with a seniority date of August 28, 1944, on the Coos Bay Agency roster.

On September 7, 1946, said Hill sought to bump Gustafson and on September 8, 1946, he sought to bump White.

It is admitted that had Hill been on active duty in Carrier's service during the time he spent in our armed forces he could have bid on jobs bulletined on rosters other than his own under Schedule Rule 21. Carrier denied such request to bump on the ground the same had not been duly and timely filed in accordance with the terms and provisions of the military Memorandum.

It is the position of Petitioner the Memorandum has application only to Schedule Rule 16 and, in the alternative that Carrier led him to believe he was not subject to the Memorandum.

With reference to the meaning of the Memorandum we cannot agree with Petitioner. It is true Rule 21 by itself makes no provision for an employe who is in status whereby he could not exercise the rights obtained thereunder. The Memorandum safeguards such rights and also regulates the exercise of the same. We think that portion reading "be restored to such position * * * to which his accumulated seniority entitles him" refers to every right one

may have under the Schedule. The fact the time period is scarcely sufficient to allow one to prudently exercise his rights is not our problem in that we do not make Schedules.

Passing now to the point Carrier led Petitioner into the belief he was not subject to the Memorandum insofar as his rights under Rule 21 were concerned. We cannot find in the record that representatives were made to Petitioner during the time period set out in the Memorandum and that but for said representations Petitioner would have exercised his rights.

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 Employee 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 herein; and

That the facts of record do not warrant an affirmative finding.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Signed) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 4th day of April, 1952.