

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LONG ISLAND RAIL ROAD COMPANY, Debtor
WM. WYER, Trustee

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Long Island Rail Road that:

(1) The Carrier failed to comply with the provision of Article III, E-1 (7) and Article III, E-2 (2) of the agreement between the parties when, on September 17, 1950, it changed the rest days of Agent H. P. Hansen from Saturdays and Sundays to Tuesdays and Wednesdays, and then denied the request of said Hansen to displace Agent F. M. Fred, a junior employe who had Saturdays and Sundays as rest days; that

(2) H. P. Hansen shall now be allowed to exercise displacement rights against F. M. Fred as provided for in above mentioned rules; and that

(3) Until such displacement is allowed and beginning with September 17, 1950, Agent Hansen shall be compensated at the time and one-half rate for all Saturdays and Sundays that he has been required to work, and he shall be compensated at the straight time rate for all Tuesdays and Wednesdays that he has not been permitted to work, plus time consumed in traveling as provided for in Article IV, N-1, since September 17, 1950.

EMPLOYES' STATEMENT OF FACTS: Prior to September 17, 1950, Claimant Hansen, seniority date July 21, 1948, was a regularly assigned occupant of a monthly-rated position listed in the Rate Schedule of the Agreement as "Unassigned Relief Agents." Agent F. M. Fred, seniority date November 20, 1948, was likewise a regularly assigned occupant of an identical position of the same class—Unassigned Relief Agents.

Both positions were assigned to work five days per week, Monday through Friday, with Saturday and Sunday designated as rest days. On September 1, 1950, the Carrier's Supervising Agent addressed the following communication to Agent Hansen, the senior of the two:

For the reason stated above, there is no basis for the instant claim and it should, therefore, be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant, Hansen, held a monthly-rated "Unassigned Relief Agent" position. This position is designated by an asterisk (*) and permanent vacancies of such positions may be filled from the seniority seniority roster without regard for seniority under Article 2-G. The asterisk position to which claimant was the appointee was assigned to work five days per week with Saturdays and Sundays as the designated rest days. On September 1, 1950, Claimant was informed that effective September 17, his rest days would be changed to Tuesdays and Wednesdays. On September 10, Claimant advised that he would displace F. M. Fred, a junior employe holding appointment to a similar asterisk position with Saturdays and Sundays rest days. Carrier denied Claimant's request on September 18.

The Carrier concedes that Claimant had the right to exercise his seniority to any position not covered by an asterisk but, it contends, he is barred from displacing into an asterisk position, citing Award 5045 determining a prior dispute between these parties.

The Organization points to Art. III, Para. E-2 (2), relating to displacements under circumstances, it contends, present here, in support of its position urging that Article 2-G applies only to the filling of permanent vacancies with which we are not concerned. It argues that since the occupants of asterisk positions are subject to the Agreement, they are fully subject to Art. III, E-1 (displacement by seniority) and E-2 (2).

Respective rule reliance is as follows:

1) Paragraph G of Article II, relied upon by Carrier:

"Notices of permanent vacancies in positions designated by an asterisk (*) in the Rate Schedule shall be posted for the purpose of giving employes an opportunity to present their qualifications for consideration for appointment to such positions. **The Company may fill such vacancies by appointment from the seniority roster without regard to seniority.**" (Emphasis added.)

2) Paragraph E-2 (2), Art. III and Paragraph E-1 therein referred to, relied upon by the Organization:

"E-2. An employe may remain on his regular position or may exercise seniority in accordance with the provisions of Paragraph E-1 of this Article III, if he indicates to the proper officer his intention to do so, in writing, within ten (10) days of the day on which any of the following circumstances occur:

"* * *,"

"(2) When either or both rest days of his position are changed from that shown when it was last advertised."

"E-1. An employe may displace a junior employe by the exercise of his seniority in the following circumstances:

"* * *,"

"(7) When he elects to choose another position in accordance with the provisions of Paragraph E-2 of this Article III."

Under Rule G-II Management has retained rights of appointments to the asterisk positions from the roster without regard to seniority. This discretion

is attendant upon a comparatively few positions which were presumably reserved either because of the responsibilities of the locations or to provide trainee positions for future managerial personnel. Whatever the reason, the exception is clearly stated by the rule and represents the outcome of past negotiations of the parties. We should strive to so interpret other articles in the Agreement so as to preserve and not destroy needlessly any particular section thereof.

To apply the general displacement rule to asterisk positions as contended for by the Organization, would render Carrier's free choice in making appointments thereto a mockery. We say this because under such theory, any such appointee could immediately thereafter be swept from the position by a senior employe irrespective of his qualifications, under any one of eight circumstances set forth in Rule E-1. We should not assume that the parties intended to do a useless act in negotiating Rule G-II, nor, should we so interpret an Agreement so as to result in an absurdity when a path is open to effectuate an expressed intent. Claimant was considered for this particular asterisk position based upon his special qualifications as reflected by his application. He is not necessarily qualified for other asterisk positions, including other positions of unassigned relief agent. Note spread in salary between the different asterisk positions.

Further, we stated in Award 5045, a dispute between the same parties, that "The right * * * to displace is limited to junior employes holding non-asterisk positions." While such statement was gratuitously made, we believe that it expressed a correct interpretation of the rules involved in both disputes.

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

That the Agreement does not sustain the claim asserted.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 16th day of July, 1954.