

Award No. 6828

Docket No. CL-6750

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, as amended, particularly Rules 2-A-1, 2-A-2, 2-A-9, 3-A-1(c), when it failed to recognize the application of Manny Weber, Truckman, Cincinnati Division for position of Relief Clerk No. 2, Hamilton, Ohio, effective Saturday, October 27, 1951, at 3:30 P. M.

(b) Manny Weber be paid the pro-rata rate of Relief Clerk No. 2 and the punitive rate for all time worked outside of the tour of duty thereof, including rest days, in accordance with Rule 4-A-6, from 3:30 P. M., October 27, 1951, and all subsequent dates until adjusted. (Docket W-814)

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 in which the Claimant in this case held a position 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, amended September 1, 1949, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimant in this case, on the date this claim began, held a position of Truckman at the Court Street Freight Station, Cincinnati, Ohio. Position of Truckman (or Freight Trucker) is a Group 2 position as specified in the Scope of the Rules Agreement. It is provided in Rule 3-B-1(a) as follows:

All data contained herein have been presented to the employee involved or to his duly authorized representative.

(Exhibits not reproduced).

OPINION OF BOARD: This case is before this Board on a joint statement of agreed facts as follows:

On October 5, 1951, Relief Clerk R. A. Brown resigned effective at the close of tour of duty, October 14, 1951. On October 8, 1951, Agent Walter Gard, Hamilton, Ohio, hired F. E. Cecil who started to work the same day.

The Relief Clerk's position at Hamilton was advertised on Bulletin No. 38 issued October 17, 1951. This position was awarded to V. E. Cecil on Award No. 36, dated October 24, 1951, to be effective at 3:30 P. M. Saturday, October 27, 1951.

The Claimant, Manny Weber, was employed as a Truckman, a Group II position, on August 30, 1948. He was furloughed for military service on July 1, 1949. He was discharged from the U. S. Navy Reserve on June 30, 1951 and returned to the Carrier's service July 24, 1951.

There is an Agreement between the parties of the effective date May 1, 1942, reprinted as of August 1, 1953. Certain rules are contained therein which will be referred to as occasion requires.

V. E. Cecil had no seniority rights in Group 1 at the date he was employed. The Claimant, Weber, had established seniority rights in Group II from date of August 30, 1948.

The Carrier followed the procedure set up in Rule 2-A-1, effective September 1, 1949, which provides as follows: "All new positions or vacancies known to be of more than thirty days duration will be bulletined * * * *" then describes what the bulletin must show.

No bids were received from employees holding Group 1 seniority, nor were there any furloughed Group 1 employees involved; just V. E. Cecil and the Claimant made application for the position.

It is the Employees' position that Claimant Weber, with an established Group II seniority date as above stated, should have been awarded the Relief Clerk Group I position in preference to V. E. Cecil, who had no seniority in Group I.

Contra to the Employees' position, the Carrier takes the position that since the Claimant did not possess seniority in Group I, it must follow that he had no demand right to Group I work and hence was not entitled to be awarded the relief position at Hamilton, Ohio.

Seniority is set up by groups in the respective seniority districts in accordance with Rule 3-B-1 (a) which provides as follows: Each operating division and, except as otherwise agreed, each System General Office Department shall constitute a separate seniority district by groups as such groups are defined in the scope of the Agreement.

As applied to the instant case:

Group I—Clerks, then clerks are defined.

Group II—designates various positions which includes Truckman, the position held by the Claimant.

Rule 2-A-1 (b) provides—Employees including those furloughed, desiring bulletined positions or vacancies will file their claims, prior to the expiration of the bulletin, with the designated officer.

Claimant Weber made application in conformity with the above rule, as did V. E. Cecil.

Rule 2-A-2 (a) provides, in assignment of employees to positions subject to the application of the provisions of Rule 2-A-1 and 3-C-1, fitness and ability being sufficient, seniority shall govern.

The Employees assert that the record fails to show that Claimant did not possess fitness and ability, therefore the issue is whether an employee in the Group II seniority rights has prior rights to bulletined position or vacancy before a newly hired employee with no seniority rights except acquired as above stated.

Rule 2-A-9 provides:

"Qualified employees filing applications for positions subject to the application of the provisions of Rules 2-A-1 and 3-C-1, bulletined in other seniority districts will, on the basis of seniority in their home seniority district, be given preference over individuals not covered by this Agreement."

The Employees assert that it would be contrary to the principle established by Rule 2-A-9 and certainly discriminatory if employees in the same district where the position or vacancy existed, as was the situation here, did not have preference over individuals not covered by the agreement.

We believe the purpose of Rule 2-A-9 is to permit qualified persons to file bids (applications) for positions bulletined in their classification in other seniority districts. Here there is only one seniority district involved, a single seniority district, namely the Cincinnati operation district.

The Employees have failed to show by the rules relied on in behalf of the Claimant, or by proven practice, that Rule 2-A-9 extends a bid or application right to file for positions bulletined in Group I.

To adopt the Employees' conception of Rule 2-A-9 would tend to expand the intent of the rule, and would require a modification or amendment thereto which this Division is not authorized to do, as will become apparent later in this opinion.

Rule 3-E-4(a) provides that employees transferred from Group II to Group I, or vice versa, within the same seniority district who do not have seniority in the group to which transferred will rank in such group from date of transfer and will retain and continue to accumulate seniority in the group from which transferred. Part (c) of the rule provides that employees covered by this rule (3-E-4) entitled to exercise seniority under this Agreement may exercise their seniority in either group without forfeiting seniority in the other group.

Apparently, the Claimant relies on (c) of the above rule. This part of the rule applies only to employees covered by the rule who have seniority both in Group I and Group II. It merely provides, if such employees exercise their Group I seniority they do not forfeit their Group II seniority, or, in the alternative, if they exercise their Group II seniority they do not forfeit their Group I seniority, nor does this rule in any respect grant Claimant Group I seniority.

The above rule does not grant to anyone specific right to transfer. Under it, the Carrier may select and transfer and when it does, the date transferred establishes a roster ranking in a new group. Such is our concept of the above rule.

The Employees cite Award 5268. Rule 7 cited therein has been examined and compared with Rule 2-A-2 of this Agreement. They are dissimilar, and in addition, the factual situation therein is likewise not similar to the facts

in the instant claim. It would serve no useful purpose to set out the distinction in that Award and the instant case. The cited Award is not in point.

The following Awards are pertinent.

The authority of this Division is limited to interpreting and applying the rules agreed upon by the parties. If inequities among employes arise by reason thereof, this Division is without authority to correct them as it has not been given equity powers. In other words, we cannot make a rule or modify existing rules to prevent inequities thus created. Renegotiation thereof is the manner provided by the Railway Labor Act, which is the proper source of authority for that purpose. See Award 5703. See, also, Awards 4439, 5864, 2491.

"The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance." See Awards 3523, 6018, 5040, 5976.

For the reasons given herein, we conclude that the claim should be denied.

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 Employee 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 involved herein; and

That the Carrier has not violated the Agreement as contended.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1954.