Award No. 6914
Docket No. CL-7053

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

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

THE CHICAGO RIVER & INDIANA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that the Carrier violated the Memorandum of Agreement between the Brotherhood and the Chicago River & Indiana Railroad Company and the Indiana Harbor Belt Railroad Company, dated November 10, 1943:

1. When on March 9, 1953, they refused to assign Thomas M. Bowen to position of Telephoner-Leverman at the Calumet Avenue Interlocking Plant, and

2. That the Carrier now be required to permit Mr. Bowen to displace on position of Telephoner-Leverman, which he sought on his return from military service, and

3. That Mr. Bowen be reimbursed for all wage losses sustained as result of Carrier's refusal to permit displacement.

EMPLOYES' STATEMENT OF FACTS: Prior to November 10, 1943, the positions of Telephoner-Levermen at the Calumet Avenue Interlocking Plant at Chicago, Illinois, were not covered by any agreement.

To provide the necessary regular employes to man these positions, the Carrier and our Organization negotiated a Memorandum of Agreement effective November 10, 1943, which was subsequently revised April 5, 1945 and March 1, 1946, which Memorandum of Agreement set forth certain conditions under which these positions were to be filled by employes carried on the Clerks' roster, the Memorandum of Agreement, as revised March 1, 1946, reading as follows:

> "It is agreed that positions of Telephoner-Levermen at the Calumet Avenue Interlocking Plant do not come within the scope of the Chicago River and Indiana General Clerks' Agreement, but it is further agreed that on and after November 15, 1943, vacancies in such positions shall nevertheless be bulletined to employes covered by that Agreement in accordance with the provisions of Rule 24 thereof. Employes whose names are shown on rosters as provided by Rule 23 of the Agreement referred to and who are now or

"We understand that we are obliged to comply with the Universal Military Training and Service Act in giving Mr. Bowen his re-employment rights, but the fact that he was not permitted to take the position referred to is not, in our opinion, a denial of such rights as Mr. Bowen's seniority rights, in our opinion, do not entitle him to displace the incumbent of Telephoner-Leverman position because that position does come within the scope of the Clerks' Agreement.

"He can exercise his seniority rights to positions coming under the Clerks' Agreement which are as good or better than the position referred to and we are quite willing to have him exercise such rights.

"In fact, it was pointed out to Mr. Bowen (whose present job rate is $14.18 per day) that he could exercise his seniority rights to position identified as Job 57 which pays $14.80 per day in comparison to $14.50 per day, the rate of the Telephoner-Leverman position.

"The Carrier's only obligation under the Contract is to bulletin to clerks vacancies in Telephoner-Leverman positions which was done but no bid was made by any clerk and the Carrier was obliged to fill the position with the present incumbent, a man who was not a clerk. In so far as the clerks are concerned, the position, in our opinion, therefore, no longer exists. The fact that Mr. Bowen was absent in the service at the time the position was bulletined we do not believe is in point.

"As previously stated, we are quite willing to have Mr. Bowen exercise his seniority rights to positions coming under the Clerks' Agreement which are as good or better than the position referred to.

Yours very truly,

/s/ R. H. McGraw
General Manager."

No further correspondence concerning this case has been received from the U. S. Department of Labor and this Carrier considers it particularly significant that the case has not been further progressed by them and submits that the Department of Labor may have considered that claimant Bowen had extended to him by this Carrier all the rights and privileges he was entitled to.

CONCLUSION

The issue in this dispute resolves on the question as to whether the Carrier violated the Agreement of November 10, 1943 when it declined to permit Mr. Thomas Bowen to displace a Telephoner-Leverman at the Calumet Avenue Interlocking Plant.

The evidence herein presented conclusively shows that the Agreement was not violated and that the claimant Bowen had no displacement rights as such and the claim should, therefore, be denied.

All evidence and arguments presented herein have been made known to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant with a seniority date of August 12, 1946 on the Yard Clerk's roster entered the service in the armed forces of the United States on March 1, 1951. On November 19, 1951, a position of Relief Telephoner-Leverman became vacant at Calumet Avenue Interlocking Tower.

It was, pursuant to agreement, bulletined to the Clerks' roster. No bids were received from Clerks and the position was awarded to an employe with no seniority as a Clerk. The position in question was not covered by the Clerks' Agreement, but was governed by a Special Memorandum of Agreement, as revised, whereby it is stated that although such positions do not come within the scope of the Clerks' Agreement nevertheless on and after date of November 15, 1943, vacancies shall be bulletined to Clerks in accordance with certain provisions of the main Agreement between the parties, and Clerks shall continue to accumulate seniority for all purposes on rosters from which drawn.

It was understood under the Special Merorandum that regular employes on the Clerks' roster would have no displacement rights on any Telephoner-Leverman positions in case their positions were abolished or where employes return from regular leaves of absence.

Claimant returned from service on March 1, 1953 and on March 9, 1953 he requested the right to displace the employe previously named to the position in question.

The question on which this dispute arises is did Claimant have a right to displace on this position? We believe, and the parties seem to be in agreement, on the proposition, that no displacement right to the position exists in the Agreements, but does the Universal Military Training Act of 1951 give an additional right whereby such displacement right was created?

We are of the opinion that it did not. The service act was not intended to give any superior right and there is no wording in the same which would lead to that conclusion. The federal act was designed with the expressed purpose to protect the service man in his position, in other words, that he not be penalized by reason of serving his Country in his employment status. We do not consider that it was designed to augment his previous position or to give him any additional rights which he would not have had, if he had not served.

Here, if we reached a favorable result on Claimant's status, we would be entering into the realm of speculation of what he might have done, had he been free to bid on the bulletined job. Under the Agreement between the parties and the Special Memorandum, as revised, he had no right on March 1, 1953, on return from service for displacement. Can it be said that the federal law gives him that right?

Numerous similar situations were the subject of arbitration proceedings shortly subsequent to World War II and many such cases were taken into the federal courts. The situation relative to superior rights or so-called "super seniority" was clarified by the case of Fishgold v. Sullivan Dry Dock, et al., 328 U. S. 275 wherein it was decided that such a right did not exist. Likewise in the instant claim it is sought, by invoking the federal act, to gain an additional right which the Agreement and Special Memorandum did not create.

This, we view as not intended by the Universal Military Training Act, and such interpretation has been widely followed by the Courts, dealing with like or similar factual situations. In other words, the Agreement between the parties controls. The federal act protects him in his job status while in service. It does not give him any superior or additional rights. Hence this claim must fail.

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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of March, 1955.