# Award No. 7102
# Docket No. CL-7273

## NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

**Edward F. Carter, Referee**

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## PARTIES TO DISPUTE:

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

## THE PULLMAN COMPANY

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

(a) The Pullman Company violated the rules of the Clerk's Agreement on March 16, 1954, when it removed W. E. Mazyck from his position of Storekeeper, Store 681 (Ivy City Shops), Washington, D. C., without cause, disregarding his rights, and placed therein L. S. Walker, who holds no seniority on the Washington District Roster; and

(b) That W. E. Mazyck now be reinstated to his position of Storekeeper, Store 681, and that he be additionally compensated for each day he is arbitrarily withheld from performing the work of his rightful position; further; that all other employes adversely affected be reimbursed for any loss suffered account of said violation.

**EMPLOYES' STATEMENT OF FACTS:** W. E. Mazyck, with an established seniority date of 1-10-37 on the Washington District Group 1 roster, was assigned to the position of Storekeeper, Store 681, on June 23, 1952. On March 10, 1954, Mr. J. L. Leban, Superintendent, Washington District, advised Mazyck that although his work was and had been satisfactory, he was being replaced by L. S. Walker, effective March 16, 1954. Prior to March 16, L. S. Walker held position of District Storekeeper, Penn. Terminal District, from which he was displaced by J. Fiora, whose position of Assistant to Superintendent was abolished on the aforementioned date. Mr. Walker had a seniority date of 6-23-52 on the Penn. Terminal District Group 1 roster and 3-12-23 on the Pittsburgh District Group 1 roster. He held no seniority rights on the Washington roster, having waived such rights when he executed the option form of June 30, 1953, indicating the two seniority rosters on which he desired to retain seniority under the Clerks' Agreement.

During discussion of this subject on March 10 with Assistant Superintendent C. G. Rogers and on March 11 with Superintendent Leban, Local Chairman M. A. Whittington protested the removal of Mr. Mazyck in the manner proposed by Management and pointed out that this was a direct violation of the Agreement. On March 15 Mr. Whittington addressed a letter to Superintendent Leban referring to their previous discussion and asking whether or not it was still the intention to remove Storekeeper Mazyck in view of the Organization's protest. Superintendent Leban replied on March 18 advising that L. S. Walker was appointed, effective March 16, 1954, to

The Company affirms that all data submitted herewith in support of its position have heretofore been presented in substance to the employe or his representative and made a part of the question in dispute.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On March 16, 1954, the Official Position of Assistant to Superintendent, Pennsylvania Terminal District, was discontinued and the incumbent (Fiora) was permitted to return to his former position of District Storekeeper on the Pennsylvania Terminal roster in place of L. R. Walker. The latter was permitted to return to his former position in the Washington, D. C. District in place of the Claimant. The latter was advised that he could displace on the Washington roster or transfer to the position of Storekeeper in the Baltimore District, which was vacant. He chose the latter. The Organization asserts that the Agreement was violated when Claimant (Mazyck) was removed from his position in the Washington District.

The Carrier contends that Rule 19, current Agreement, is controlling. It provides:

> "An employe returning from (1) leave of absence (2) vacation (3) temporary assignment (4) official position (5) appointive position may return to former position providing it has not been abolished or senior employe has not exercised displacement rights thereon or may, upon return or within 5 days thereafter, exercise seniority rights on any position bulletined during such absence. In the event employe's former position has been abolished or senior employe has exercised displacement rights thereon, the returning employe will be governed by the provisions of Rule 20 and will have the privilege of exercising seniority rights over junior employes, if such rights are exercised within 10 days after his return. Employes displaced by his return will be affected in the same manner."

The record shows that effective June 23, 1952, Fiora was promoted from District Storekeeper, Pennsylvania Terminal District to Assistant to Superintendent. Walker was promoted from Storekeeper, Washington District to succeed Fiora and Claimant was promoted to succeed Walker. When Fiora's position of Assistant to Superintendent was abolished each of these employes was permitted under Rule 19 to return to his former position.

The Organization contends that this was not permissible under the controlling rules because of a Memorandum Agreement entered into on January 1, 1953, which was incorporated into the current Agreement as Rule 27 thereof. It states in part:

> "An employe will not retain and accumulate seniority on more than two rosters. If transferred to a third roster, he shall designate in writing to his new supervising officer, copy to Local Chairman, at time of transfer on which one of the former rosters seniority date shall be retained."

The Memorandum Agreement of January 1, 1953, required employes holding seniority on more than two rosters to designate before July 1, 1953, on which two rosters they desired to retain seniority. Walker had seniority rights at Pittsburgh, Washington and Pennsylvania Terminal. He elected in writing to retain seniority rights at Pennsylvania Terminal (where he was employed) and Pittsburgh. He thereby gave up his seniority rights in Washington and the Organization contends that he thereby gave up any and all rights to return to his former position in Washington. Upon the return of Walker to the Storekeeper position in the Washington District he was given a seniority date of March 16, 1954, the date of his return. He thereupon selected Pittsburgh as the second point at which he desired to retain seniority and relinquished his seniority at Pennsylvania Terminal.

It appears clear to us that Claimant's replacement by Walker was not a displacement under seniority rules. The positions were not subject to the promotion, assignment and displacement (PAD) rules. In filling such positions, the Carrier is at liberty to select the best qualified employe. After his selection, all other applicable Agreement rules apply to him. The replacement of Claimant was pursuant to Rule 19 which permitted Walker, the occupant of an appointive position to return to his former position. This could be done irrespective of seniority under Rule 19 although he would be required to take a new seniority date and be governed by it when seniority dates became controlling in the exercise of his rights under the Agreement. He was required to again designate in writing the point other than Washington where he desired to retain seniority. This he did. It will be noted that Rule 27 contemplates that employes holding seniority on two rosters might be transferred to a third, and provides how he shall relinquish seniority on one of the two seniority districts where he had previously retained seniority.

It is the contention of the Organization that an employe has no other rights than those acquired by seniority. This is not an accurate statement. An employe has such rights as the Collective Agreement gives him. Seniority rights may be expressly waived by agreement rules at it was on these PAD positions. Rule 19 is a special rule which prevails in such a situation as we have involved here. Walker has the right under Rule 19 to return to his former position in the Washington District and, having relinquished his seniority rights in that district, he must take a new seniority date which fixes his rights in that district when seniority controls. Since neither of the two exceptions contained in Rule 19 have any application here, the Carrier's actions were in compliance with the Agreement.

**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 5th day of August, 1955.