

Award No. 7352
Docket No. CLX-7159

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**

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 Railway Express Agency, Inc., and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes was violated at the Seattle, Washington Agency when Edgar Bundy was removed from his regularly assigned position of driver October 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26 and 27, 1953, and required to perform work on position of Cashier, and

(b) He shall now be paid the rate of pay of his regularly assigned position of driver for each day he was required to perform service on an assignment other than his own, in addition to the amount already paid him for working the position of Cashier.

EMPLOYES' STATEMENT OF FACTS: Edgar Bundy, with a seniority date of November 3, 1936, was the regularly assigned occupant of position of Assistant Cashier, Group 88, Position 1, hours of service 8:30 A. M. to 5:30 P. M. (exclusive of meal period) days of rest Saturday and Sunday, monthly rate of pay of \$328.92, including escalator.

October 8, 1953, Notice No. 109 was posted advising the position of Assistant Cashier was abolished effective October 11, 1953. (Exhibit A)

P. M. Carlson, seniority date of October 12, 1941, was regularly assigned to position of Driver, Group 50, Position 14, Route 8, hours of service 9:30 A. M. to 6:00 P. M., (exclusive of meal period) days of rest Saturday and Sunday, monthly rate of \$319.95, including escalator.

C. A. Curtis, seniority date of April 7, 1915, was regularly assigned to position of Cashier, Group 82, Position 1, hours of service 9:30 A. M. to 6:00 P. M. (exclusive of meal period) days of rest Saturday and Sunday, monthly rate of \$363.92, including escalator.

be assigned to the position sought, nor is any penalty provided in instances where a delay occurs in assigning the employe whose position is abolished, particularly where there is no showing, as here, to indicate that the delay was arbitrary or capricious, or where the Carrier was acting in good faith and the displacement permitted as soon as was reasonably possible under existing circumstances. (See Award 2174.)

The displacement in the instant case was consummated on October 28, 1953, a matter of some 14 working days intervening during which the claimant was paid a rate approximately \$44.00 per month in excess of the rate of the position sought. It cannot successfully be contended that the employe suffered by reason of such delay or that the delay was unreasonable. In Decision E-1596 of Express Board of Adjustment No. 1, copy attached, Referee John Thad Scott denied a claim in an instance where an employe was withheld from a position for approximately two weeks, holding that Award 2174 was determinative, and that such a delay in effecting transfer was not unreasonable.

Employes have failed to support their contention that employe Bundy was the regularly assigned incumbent of the position of Driver at Seattle on October 12, 1953, and that he was removed therefrom to perform work on another position in violation of any rule of the Agreement. The claim that he shall now be paid at Driver's rate in addition to amount already paid for relieving on the position of Cashier on October 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26 and 27, 1953 is entirely without merit under the facts, the rules, and Awards cited by Carrier, and should be denied.

All evidence and data set forth have been considered by the parties in correspondence and in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this case, in brief, are as follows: Claimant had for many years held the position of Assistant Cashier at the Seattle, Washington Agency and on October 8, 1953 a notice was issued abolishing his position. As a result thereof Claimant on October 9, 1953 expressed his intention of displacing a junior employe on the position of Driver, which was proper under the rules and no question with reference to this is raised in the record. The Cashier at the Agency was scheduled to start on his vacation of two weeks on October 12, 1953 and in passing it should be noted that the rest days of all positions mentioned, Cashier, Assistant Cashier and Driver, were the same, Saturday and Sunday. October 12 fell on a Monday. As Claimant's position of Assistant Cashier was terminated by abolishment the effective date of this would be at the end of work on October 9, 1953. Claimant was requested to take over the position of Cashier at the beginning of the Cashier's vacation which would be on October 12, 1953. When Claimant was requested to take over the Cashier's position he filed written protest with his superior. Later in a conference over the written protest it is contended by Carrier that Claimant abandoned the same and voluntarily agreed to take over the Cashier duties on October 12. This contention is denied by Petitioner.

This fact situation creates several questions for our consideration, on Claims (a) and (b):

1. Did Claimant voluntarily assume the duties of the Cashier position, and if so, did he have any right to do so under the terms of the Agreement?
2. As a basis for the claim made can it be presumed that when Claimant expressed his intention to displace a junior employe in the position of Driver did that position become his regular assigned position?

In the record there appears citation of rules of the current Agreement and of Awards interpreting like rules in the contention of the parties in support of their respective positions on these claims.

An investigation was held on the matter of Claimant's acceptance of the Cashier's position during that employee's vacation period. It shows that written protest was made and received and the balance of the evidence taken shows a conflict in the matter of the conference held subsequent to the filing of the written protest. It appears from this evidence that it could easily be the basis for a misinterpreting. In reviewing this evidence we are of the opinion that the position was accepted and worked under protest. Also if it could be considered that the acceptance was of a voluntary nature a serious doubt arises as to the validity of such an arrangement. We are inclined to the viewpoint that Claimant had no such right. In this connection see Awards 3256 and 3416 and other awards cited therein.

In the matter of Claimant's seniority rights and the provisions of Rule 57, Absorbing Overtime, raised by reason of Claimant not having served in the Driver position prior to taking over the duties of the Cashier position and on Carrier's contention that until he took over his duties in the Driver position that it was not his regularly assigned position, we are of the opinion that under the facts here presented the action of Carrier in placing Claimant in the protested position was the cause of Claimant's inability to assume the duties of this position. Therefore, we deem it not necessary to pass on the same and the citing of rules in the Agreement and interpretative awards on the subject will not be considered as a valid defense by Carrier to these claims.

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 employees 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 Carrier violated the Agreement.

AWARD

Claims (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June, 1956.