Award No. 9101
Docket No. CL-10565

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

(1) Carrier violated the Clerks' Agreement when on September 9, 1957, it arbitrarily removed the name of Mrs. Donna Hilton from the seniority roster of Seniority Section 29, Office of Manager Machine Procedures.

(2) Carrier be required to restore the name of Mrs. Donna Hilton to Seniority Roster Section 29 in accordance with her original seniority date of March 26, 1956.

(3) Carrier be required to compensate Mrs. Hilton for any loss in salary and/or benefits as result of Carrier's failure to call her to vacancies in line with her seniority.

(4) Joint check of Carrier's records be made to determine the exact number of days a junior employe to Mrs. Hilton was used and reparation be made accordingly.

EMPLOYES' STATEMENT OF FACTS: (1) Prior to August 30, 1957 Mrs. Donna Hilton was employed in the office of Manager Machine Procedures as key punch operator. On August 30, 1957 she was displaced by senior employe account reduction in force.

(2) On Friday, September 6, 1957, Mrs. Hilton gave Chief Clerk Ormsby a letter filing her name and address as required by Rule 14(f), copy of which was received by the General Chairman on Monday, September 9, 1957. In this letter Mrs. Hilton advised she would be available for extra or relief work. See Employes' Exhibit No. 1.

(3) On September 9, 1957 Mr. E. L. Smith, Manager Machine Procedures, called the General Chairman and related the facts surrounding the

All data submitted in support of Carrier's position has been presented to the employes or duly authorized representatives thereof and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was displaced account of force reduction on August 30, 1957. Eight days later she filed with the proper official her name and address in attempted compliance with Rule 14 (f) of the Agreement, which requires:

> "Employes desiring to protect their seniority rights under this rule must within five days from date actually reduced to the furloughed list, file their names and addresses in writing * * * or forfeit all seniority rights."

This was rejected because assertedly not filed within the time limit specified by the rule and her seniority was terminated.

The Organization seeks restoration of seniority status and compensation for loss of salary in reliance on Rule 14 (e), which provides:

> "Employes when actually displaced account * * * reduction of force, * * * must exercise their seniority rights in displacing junior employes or indicating choice of assignment within ten days, otherwise they will be placed on the furloughed list * * *."

Thereunder it is contended that claimant was allowed ten days within which to exercise her seniority rights before she would be reduced to the furloughed list, wherefore the five day period within which the name and address must be filed would begin at the end of the ten day period allowed for exercise of seniority rights and claimant's name and address were filed in apt time.

However, in the case before us no job was held by a junior employe, hence no exercise of seniority rights or choice of assignment was possible. Carrier insists that in such case the ten day period for choice of assignment is eliminated, the employe is immediately placed on the furloughed list and the five day period for filing name and address begins to run from date of displacement.

Carrier first urges that "the seniority standing of certain readily ascertainable employes could be affected by the outcome of this dispute" hence consideration of the merits of the dispute should be deferred until notice has been given such employes. Claimant is not in position to object and in view of our conclusion otherwise, we think it unnecessary to consider whether other employes were "involved" in the dispute so as to require notice on whether as among themselves the employes were bound by the construction of their agreement made by their organization, and it had authority to represent them.

As to the construction of Rule 14(e) and (f) here involved the most that can be said in behalf of the claim of the Organization is that the rule is ambiguous. In such event we should look to its construction by the parties on the property.

Both in discussion on the property and in the submission here Carrier asserted that the rule had many times been construed on the property as now

construed by Carrier in the case before us; that "everybody has always understood this on the property" and identified eight cases where the Division Chairman wrote letters to that effect. This does not appear anywhere to have been denied. We are bound by this consistent construction of the rule by the parties.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1959.