Award No. 10365
Docket No. CL-10296

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Raymond E. McGrath, Referee

PARTIES TO DISPUTE:

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

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that Carrier violated the Agreement:

(1) When on July 7, 1955 the Carrier refused a Senior Employee, Mrs. Cornelia Wilkes her rights to displace a junior employee, Mr. Bobby Chessor, in the Accounting Department at Nashville, Tennessee.

(2) That Mrs. Wilkes should be compensated for all Monetary Loss suffered by her as a result of the unilaterial action of the Carrier and be afforded her seniority rights.

EMPLOYES STATEMENT OF FACTS: On July 1, 1955 Notice of abolition of the position of Stenographer-clerk in the office of the Auditor of Disbursements at Nashville, Tennessee was posted, to become effective July 8, 1955.

See Exhibit No. 1. On July 5, 1955, Mrs. Cornelia Wilkes gave notice of exercise of her seniority to displace a junior clerk, Mr. Bobby Chessor, exhibit No. 2. On July 7, 1955, the Auditor of Freight Accounts denied her the right to displace. See Exhibit No. 3.

The claim was further handled with the Auditor of Freight Accounts, Mr. Van C. Martin and further declined, exhibits 4 and 5.

The claim was appealed to Mr. W. Fred Bonney, Comptroller and again declined, exhibits 6, 7, and 8. On January 9, 1956 the case was progressed to Mr. Caskey Knott, Supervisor of Wages, the Highest Officer of Appeal on this Property, exhibit No. 9.

It was further pointed out to Employes that to permit a furloughed employe to displace an apprentice clerk in the circumstances of the instant case would defeat the purposes of the apprentice rule. In fact, the employment of a furloughed clerk with many years' experience (Mrs. Wilkes was first employed in the Accounting Department as stenographer on June 2, 1941) as a beginner or learner not only would serve no purpose but, in the opinion of Carrier, would be absurd. This is pointed up by considering the parallel situation of the employment of a qualified machinist as a machinist apprentice to learn how to be a machinist. Also of interest in this connection is the fact that under shop craft rules governing apprentices there is no such thing as a machinist displacing an apprentice, and under the usual ratio rule (in our case not more than one apprentice to every four mechanics) it is common practice for a machinist or other craftsman of many years' service to be furloughed and an apprentice but lately employed retained in the service. And it is notable that even the ratio restriction of the shop craft agreement is not to be found in the agreement with Clerical and Station Employes.

The request of Employes that Mrs. Cornelia Wilkes should have been permitted to displace apprentice clerk Chessor is not supported by the governing rule of the agreement or otherwise, and should be denied.

It is further submitted that in any event that portion of Part (2) of the claim that Mrs. Wilkes should be compensated "for all monetary loss suffered by her" is too general, vague and indefinite for the carrier to even approximate the amount claimed, under which circumstances it should be dismissed.

For the reasons stated herein, this claim should be dismissed, or denied in its entirety.

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All data submitted herein has been presented in substance to the duly authorized representatives of the Employes and is made a part of the particular question in dispute.

The Carrier is making this submission without having been furnished copy of Employes' petition and respectfully requests the privilege of filing a brief answering in detail the ex parte submission on any matters not already answered herein, and to answer any further or other matters advanced by the Petitioner in relation to such issues.

(Exhibits not reproduced.)

OPINION OF BOARD: On July 1, 1955 Notice of the abolition of the position of Stenographer-clerk in the office of the Auditor of Disbursements at Nashville, Tennessee was posted, to become effective July 8, 1955. At said time this abolished position was held by the Claimant Mrs. Cornelia Wilkes. On July 5, 1955 the Claimant gave notice of exercise of her seniority to displace a junior clerk, a Mr. Bobby Chessor.

The Carrier denied her right to displace, first on the ground that "apprentice clerks are put on by reason of their background qualifications for learning the work they will be later be expected to perform and we do not believe that they are subject to displacement by a furloughed clerk. Such displacement would defeat the purposes of the rules."

In the Carrier's brief filed herein the stated reasons for the denial of the claim are as follows:

1. Claimant failed to file her address with the proper officer of the Company within ten days from the time laid off contrary to the provisions of Rule 17 (i) of the governing Agreement, and that this failure constitutes a waiver of any rights of the exercise of seniority under the rules.

2. That the apprentice clerk, Mr. Bobby Chessor did not occupy a position, and hence Claimant could not displace him.

3. That Part (2) of the claim is too general vague and indefinite.

On the question of the Claimant's failure to file her address the Board finds that after filing her address with the proper officer of the Company on August 16, 1955 she was advised that she would be given every consideration if a vacancy occurred. No memtion was made of this matter of the improper filing of address until the second conference with the Supervisor of Wages and it was not mentioned in the written correspondence until April 15, 1957. This was a year and a half later. This matter was not in issue during the early handling of the claim. At any rate if there was a violation of the Agreement it occurred on July 7, 1955 if the Carrier improperly refused the Claimant her rights under the Agreement. We disagree with the position of the Carrier on this point.

On the question as to whether or not Mr. Bobby Chessor occupied a position on July 7, 1955 the record is as follows: Mr. Chessor was employed as an apprentice by the Company for the first time on June 16, 1955. He was occupied with routine work of sorting mail, way bills, freight bills and filing thereof. This work had formerly been performed by Desk No. 35 — known as "sorting clerk." This was an established job until it was abolished by a bulletin dated April 1, 1954. Thereafter the duties previously assigned to Desk No. 35 were assigned to the remaining Employes in the Station Accounting Bureau and the duties were then subsequently removed from such other Employes and re-assembled to create a position for the Apprentice Clerk. The record discloses that Mr. Chessor worked at this position until August 30, 1955 after only about a ten week stint as Apprentice-Clerk at which time he resigned. The record does not disclose whether the job was refilled with another apprentice, whether it was refilled with another regular clerk or whether is was not refilled.

We find that Mr. Chessor occupied a position with the Carrier on July 7, 1955.

Rule 17 (a) requires that junior Employees should be laid off first.

There is no question but that the Claimant was senior to the Employe Mr. Bobby Chessor. If there was a position for which she had filed a proper bid her request should have been granted.

We find that the Carrier violated the Agreement and the Claimant should be compensated as prayed for in the complaint.

The Board finds that Part (2) of the claim is not too general, vague and indefinite for the Carrier to even approximate the amount claimed. The record shows that the Claimants abolished Stenographer-clerk position was rated $250.00 per month and that the Sorting-clerk's position before abolish-

ment was rated $253.57. The duties of the Sorting Clerk's position were being performed by the Apprentice Clerk and in accordance with Rule 10 (a) of the Agreement the rate of pay for that position should have been set by the Carrier at no less than 85% of $253.57. Carriers pay roll records should disclose the pertinent facts.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of February 1962.