

Award No. 11165

Docket No. CL-10759

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

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

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

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

(a) Carrier violated Rule 16(a), 15, 10(a), 10(c) and 10(c) (1) of the Clerks' Agreement by permitting Industrial Representative Churchill Thompson (official position) to displace R. Heckinger, Chief Clerk to Freight Traffic Manager in the Sales and Service Department, and

(b) Chief Clerk R. Heckinger, Clerks D. Blydenburgh, C. Medick and J. Bloomfield, be compensated for loss of earnings effective May 16, 1958, and continuous loss of earnings until restored to former positions.

EMPLOYEES' STATEMENT OF FACTS: On May 2, 1958, District Chairman E. A. Jeffrey received copy of letter from Mr. H. W. Dorigan, Vice-President, notifying him that Mr. C. Thompson will be appointed Chief Clerk to Freight Traffic Manager in the Sales and Service Section, Position No. FT-64, displacing Mr. R. Heckinger effective May 16, 1958, per Exhibit "A".

Mr. C. Thompson was promoted to an official position thus attaining the status of being on leave of absence.

POSITION OF EMPLOYEES: There is in existence between the Carrier and the Employees, agreement dated December 15, 1952 which contains, in part, the following rules:

RULE NO. 16 — OFFICIAL POSITIONS

(a) Employees now filling or promoted to Official positions on The Central Railroad Company of New Jersey, The New York and Long Branch Railroad Company and Reading Company, beyond

In the instant case, the senior qualified employe (Thompson) was given full consideration in making displacement on Position FT-64, which position held an "A" status.

The additional named claimants, i.e. Messrs. Blydenburgh, Medick and Bloomfield, were all junior to claimant Heckinger and their subsequent displacements followed in order in compliance with the terms of the agreement.

It is the position of this Carrier that the action taken was done in good faith and in compliance with the provisions of the current agreement providing for the filling of "A" positions by Carrier appointment.

In view of the above facts, your Honorable Board is requested to deny this claim in its entirety.

The Carrier affirmatively states that all data contained herein has been presented to the Employees' representatives.

OPINION OF BOARD: On May 15, 1958, the position of Industrial Representative, an official position not covered by the Agreement was abolished. Mr. Thompson who held this position was then appointed to the position of Chief Clerk to Freight Traffic Manager. This action resulted in the displacement of Heckinger, and three other clerks.

The position, subject of the controversy, is classified as an "A" or appointed position and was covered by the Clerks' Agreement.

The rules relied upon by the respective parties in their respective assertions are as follows:

"RULE NO. 16 — OFFICIAL POSITIONS

"(a) Employes now filling or promoted to Official positions on The Central Railroad Company of New Jersey, The New York and Long Branch Railroad Company and Reading Company, beyond the scope of this agreement, shall retain and continue to accumulate seniority and shall be considered on leave of absence."

"(b) Such promoted Employee retaining seniority as provided in paragraph (a) of this rule, who voluntarily relinquishes such position or is disqualified, may bid on any bulletined positions but shall not displace any regularly assigned Employee."

"RULE NO. 15 — RETURNING FROM ABSENCE

"An Employee returning from authorized leave of absence as provided in Rule 14, sickness, disability, vacation, suspension, or when released from positions covered by Rules 7 and 16, may exercise displacement rights as provided in Rule 10."

"RULE NO. 10 — DISPLACEMENT RIGHTS

"Effective November 1, 1955, Rule No. 10 — Displacement Rights, of Agreement effective December 15, 1952, is revised to read as follows:

"(a) Displacement rights shall be exercised on prescribed Form "E" filed with the Zone Head, copy to the

Employing Officer, District Chairman and Employee being displaced, within five (5) calendar days of the effective date entitled to exercise displacement rights, or such rights will be forfeited.

"Employees are entitled to exercise such displacement rights on the effective date their position is affected under provisions of Paragraph (b) or the effective date shown on the Form "E" . . .

"(c) Employees may return to their former position if it is still existing and is not held by a senior Employee who exercised displacement rights thereon, or providing they do not return to former assignment, they may exercise displacement rights by complying with paragraph (a) of this rule on any position to which a junior Employee was assigned by bulletin during their absence, when

(1) Returning from leave of absence or official position as provided in Rule 15."

"Rule 1(f). APPOINTIVE POSITIONS — Certain positions designated as "A" (appointive positions) mutually agreed-upon between the Management and the General Chairman, within the scope of this agreement, are not subject to Rules 3(a) and 6 and will be filled by Carrier appointment.

"Full consideration will be given to senior qualified Employees in making appointments to and displacements on these appointive positions. Employees now filling, or subsequently promoted to "A" positions, will retain all seniority rights under this agreement."

The positions under the Agreement were divided into two classifications, appointive positions and non-appointive positions. The Carrier is not required to bulletin the former position, but is required to bulletin the latter type position. However, in placing appointive positions, the Carrier is required under the Agreement to consider the senior qualified employee.

In determining the ultimate question as presented herein, the Agreement must be read as a whole, and any interpretation obtained, should if possible be consistent with the rest of the Agreement.

The Organization asserts that Thompson was required to utilize the Provisions of Rule 15 and 10 in order to sustain his displacement rights while Carrier contends that Thompson could displace an appointive position under Rule 1(f).

We cannot accept the Organizations interpretation of Rule 15 and 10. Their connotation as to the displacement right is erroneous. The displacement rights granted under these rules are permissive and not mandatory, the choice of exercising this right rests with the clerk. It was a privilege to be utilized by him if he so chose. Also Rule 10 does not prevent the person who has this privilege from seeking an appointment to a Class A position. Rule 1(f) compels it.

There is nothing in the Agreement which gives a right to the Employees to fill an appointive position, this privilege is left to the Carrier, however the Carrier must give full consideration to the senior qualified Employee.

The Employee does not have an absolute right to an "A" position. Rule 1(f) provides for the displacement of the Employee. The placement and displacement of Employees to Class A positions is within the discretion of the Carrier.

Rule 1(f) is a special rule pertaining to an appointive position and Rule 10 is a general rule applicable to non-appointive positions. The specific rule controls over the general rule.

Rule 16 does not contain the prohibition sought by the Organization. Mr. Thompson did not voluntarily relinquish his position nor was he disqualified, neither event occurred, his position was abolished. To expand the prohibition sought by the Organization would alter the rule of contract construction that the stating of one or more restrictions excludes all others.

We find no violation of 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 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 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 27th day of February 1963.