Award No. 12712
Docket No. CL-12126

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Francis M. Reagan, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

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

1. The Carrier violated the Agreement between the parties at Memphis, Tennessee, when it requisitioned B. J. Edwards, occupant of File and Mail Clerk's position to work on Assistant Chief Clerk's position which the occupant thereof, R. N. Townsend, was on his vacation from June 2, 1958, through June 20, 1958, and

2. That B. J. Edwards be compensated a day's pay at the pro rata rate attaching to his regular position of File and Mail Clerk, in addition to compensation he was allowed from June 2, through June 20, 1958, and

3. That extra clerk Mrs. A. L. Keenum be allowed the difference in the rate of pay attaching to File and Mail Clerk's position, which position she was requisitioned to work, and the higher rate attaching to Assistant Chief Clerk's position which she was entitled to work from June 2, through June 20, 1958.

EMPLOYES' STATEMENT OF FACTS: There is in effect between the Carrier and this Brotherhood an Agreement, effective June 23, 1922, as subsequently revised February 1, 1954, covering working conditions of the employes, which Agreement has been filed with the National Railroad Adjustment Board, as provided for in the Railway Labor Act, as amended, and this Agreement will be considered a part of this submission. Various rules thereof may be referred to herein from time to time without quoting in full.

In addition to the forenamed basic Agreement in effect between the parties, Employes present here two special Memorandum Agreements germane to the question at issue in this case, stipulating therein how vacation vacancies were to be filled at Memphis, Tennessee, which for ready reference are identified as — Employes' Exhibits Nos. 1 and 3. We urge the Board to note the caption appearing on the Memorandum Agreement dated November 7, 1957, (Employes' Exhibit No. 1) which reads:

more — for overtime which was not worked and would not have been worked or for assignments not worked.

The claim is without merit in its entirety, and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Board is asked to ratify the action of the Carrier in assigning File and Mail Clerk B. J. Edwards to Assistant Chief Clerk R. N. Townsend's position while the latter was on vacation from June 2, 1958 to June 20, 1958 and also the action of assigning Extra Clerk Mrs. A. L. Keenum to the vacated File and Mail Clerk's position.

Claim has been made this action violates the Agreement between the parties dated November 7, 1957 providing, in part:

> "2. All vacation vacancies will be filled from extra board, handled by the Chief Yard Clerk, Johnston Yard . . ."

Carrier replies that its action is entirely (1) in accord with the National Vacation Agreement, (2) no qualified relief existed, (3) B. J. Edwards was willing to serve as Assistant Chief Clerk, and (4) that Extra Clerk Mrs. A. L. Keenum informed Carrier she did not feel qualified to serve as Assistant Chief Clerk but did feel able to serve as File and Mail Clerk.

Facts of the case disclosed that Carrier did not contact 23 persons on extra board of Johnston Yard until May 28, 1958, one working day before beginning of vacation period when Assistant Chief Clerk's position had to be filled. Carrier had knowledge of need since January 1, 1958 when vacation list was published.

The circumstances of this case are unique for here the Carrier and the Employes have entered in an agreement restricting the broad rights conferred under the National Vacation Agreement to provide — "All vacation vacancies will be filled from extra board, handled by the Chief Yard Clerk, Johnston Yard . . ." so the National Vacation Agreement is only controlling in such areas as it has not been restricted in scope. The alleged benefits to flow from this action were the avoidance of the "step-up" procedure to the Employes and assurance of a posted vacation schedule to Carrier assuring it timely knowledge of its vacation needs.

Carrier asserts:

1. Its action was entirely in accord with the National Vacation Agreement Facts: Relief was furnished by step-up system and was not filled from extra board Johnston Yard pursuant to agreement modifying National Vacation Agreement.

2. No qualified relief existed citing negative replies received from 23 persons canvassed on Johnston Yard extra board. Facts: Carrier, though it knew of its needs from January 1, 1958 when vacation schedule was prepared and posted did not canvass Johnston Yard extra board until May 28, 1958 one working day from beginning of vacation period to be filled.

3. Mr. B. J. Edwards was willing to serve in Assistant Chief Clerk's position. Facts: Mr. B. J. Edwards was not within the class of persons defined

in the Agreement of November 7, 1957 to fill vacation vacancies. He was not a member of the extra board of the Johnston Yard.

4. Extra Clerk Mrs. A. L. Keenum informed Carrier she did not feel herself qualified to serve as Assistant Chief Clerk. Facts: It is assumed she was one of 23 extra clerks canvassed one working day before the need to fill the Assistant Chief Clerk's position began.

Speaking to point 1.

The National Vacation Agreement is controlling insofar as it has not been modified by the agreement of the parties. Here their rights, duties and obligations are guided by their agreement of November 7, 1957.

Speaking to points 2 and 4.

This factor and this factor alone is most persuasive with the Board. The Carrier cannot rely on the defense there was no qualified relief when its own action of tardy canvassing of the extra board, the source defined in the agreement of November 7, 1957 produced the situation. Surely, had sufficient time been given rather than one day before the need, one or more hopefuls for promotion on the extra list of 23 would have come forward and qualified to fill the position. The Carrier could then have made its selection from this field of the one best qualified. The Carrier recognized the agreement of November 7th. It knew where to seek its relief: the extra board list of the Johnston Yard but it unfortunately was too late. Its action in contract compliance must be reasonable and realistic.

Speaking to point 3:

It has been held a multitude of times in awards of this Board and confirmed by the Supreme Court of the United States in the case of The Order of Railway Telegraphers vs. Railway Express Agency—February 23, 1944:

> "It is well settled — rights established by a collective agreement cannot be bartered away by an individual beneficiary covered by it."

The burden is on the Carrier to initiate the process of selection and training of vacation reliefs to meet its needs. This is a privilege and prerogative of Management. In this manner it will achieve the just desserts of its contract — the person best qualified to serve. The selection process must be reasonable.

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

That the parties waived oral hearing;

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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1964.

CARRIER MEMBERS' DISSENT TO AWARD 12712 DOCKET CL-12126

(Referee Reagan)

The majority tacitly recognizes lack of qualifications as a valid defense for failure to use an employe, but refuses carrier the benefit of this defense on the basis that "* * * its own action of tardy canvassing of the extra board * * * produced the situation."

The implication that carrier was the only party with the knowledge of the impending vacation period is contrary to the record and finding of facts by the majority that the vacation schedule was jointly prepared and posted. Claimants as well as all other employes on the extra board had the same knowledge as carrier but were not interested enough in working this position to qualify themselves.

Disregarding these facts, the majority continues with the conjectural statement that "Surely, had sufficient time been given rather than one day before the need, one or more hopefuls for promotion on the extra list of 23 would have come forward and qualified to fill the position." This statement is erroneous because it is undisputed that the vacation schedule was jointly made and posted so that each employe would be informed but the employes themselves did not even contend they were qualified.

Adequate qualification is necessarily an implied condition precedent to the use and promotion of any employe to a more responsible and higher rated position such as this. Rule 6 expressly includes the requisites "fitness and ability" for promotion. Awards 12013 — Christian, 11572, 11780 — Hall, and First Division 20107 — Gray.

That portion of the opinion reading: "The burden is on the Carrier to initiate the process of selection and training of vacation relief to meet its needs" is incorrect and not supported by any rule of the agreement. As a matter of fact, the majority follows that statement with the contradictory statement that "This is a privilege and a prerogative of management." Obviously, privileges and prerogatives do not constitute contractual obligations.

Carrier's action was strictly in accordance with the applicable agreement and the claim should have been denied.

The opinion is palpably wrong and for these and other reasons we dissent.

W. M. Roberts
G. L. Naylor
R. E. Black
W. F. Euker
R. A. DeRossett

LABOR MEMBERS' ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD 12712 — DOCKET CL-12126

There are statements in Award 12712 (Docket CL-12126) which could well be attacked in a dissent, for they are wholly out of step with the concept of seniority and the provisions of the Agreement under consideration. For example, to hold that "Carrier could then have made * * * selection * * * of the one best qualified" is obviously in error but so elementary that a dissent was not considered necessary, especially in view of the fact that the end result, the sustaining Award, was proper.

However, the Dissenters' ignore those erroneous statements and attack the Award on the grounds that:

> "* * * Claimants as well as all other employes on the extra board had the same knowledge as carrier but were not interested enough in working this position to qualify themselves."

The end results, the sustaining Award, cannot honestly be attacked on such grounds in view of the facts of record in the case, for the fact of the matter is that there were several employes who had, on their own time and initiative, reported at the location and attempted to acquaint themselves with the duties of the Assistant Chief Clerk's position. Such attempts were thwarted due to the uncooperative and belligerent disposition of the Assistant Chief Clerk who obviously wished, in spite of the Agreement, to pick and choose an employe who had won his favor to work his position in his absence.

Briefly stated, the sustaining Award is correct. That better language could have been used or that argument can well be made as to the language used does not detract from the correctness of the end result.

D. E. Watkins
Labor Member