

Award No. 13078

Docket No. TE-12418

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Daniel House, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**NORFOLK SOUTHERN RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk Southern Railway, that:

1. The Carrier violated the agreement between the parties when it permitted (authorized) trainmaster W. D. Howard to improperly displace Operator-Clerk E. F. Mitchell from the third shift operator-clerk's position at Glenwood Yard, Raleigh, N. C., beginning January 24, 1960.

2. Because of such violation the Carrier shall now be required to compensate claimant E. F. Mitchell a day's pay for each day beginning January 24, 1960, and thereafter, which was lost by him and which he would have worked if he had not been so displaced.

**EMPLOYES' STATEMENT OF FACTS:** The facts are fairly simple in this case. Claimant was an extra man who, immediately prior to the first claim date, was assigned to the third shift clerk-operator's position (11 P. M.-7 A. M.) at Glenwood Yard, Raleigh, N. C., with a work week of Sunday through Thursday, rest days Friday and Saturday.

The following rules of the current agreement between the parties are in evidence:

**"ARTICLE 25.**

**RETENTION OF SENIORITY BY PROMOTED EMPLOYEES.**

Employees promoted from positions covered by this agreement to official or subordinate official positions with the Norfolk Southern Railroad Company or the Order of Railroad Telegraphers will retain and continue to accumulate seniority."

The parties are also agreed to the following:

**"INTERPRETATION TO ARTICLE 25 OF AGREEMENT EFFECTIVE AUGUST 1, 1937, COVERING 'RETENTION OF SENIORITY BY PROMOTED EMPLOYEES.'**

ity to Howard), was filling the temporary vacancy and had been on such vacancy for more than seven (7) days; (5) Howard, therefore, had the right not only under the provisions of Article 24 (c), but also under the provisions of the interpretation to Article 25, to displace this junior extra employe from that temporary vacancy.

**OPINION OF BOARD:** W. D. Howard, holding more seniority than E. F. Mitchell on the seniority roster of agents and operators on the Western District, had been promoted to the position of Trainmaster and subsequently relinquished that position and, as provided in the Agreement, he was placed on the extra list. At the time Howard was demoted, Mitchell, an employe from the extra list, had been working on a temporary vacancy, for more than 7 days. Howard was allowed to displace Mitchell on that assignment.

Carrier argues that Howard, upon promotion, was automatically on leave of absence, and, therefore, under the terms of Article 24 (c), had the right to replace Mitchell as a junior extra employe filling a temporary vacancy. Organization argues that Howard was not on leave of absence automatically or otherwise when he was promoted to Trainmaster, and met none of the other conditions precedent required by Article 24 (c), entitling him to displace Mitchell.

The case turns on the question of whether or not Howard was returning from a leave of absence. There is nothing in the Agreement which grants an automatic leave of absence to employes on promotion; Carrier submitted no evidence beyond Carrier's bare assertion that such is the intention of any Rule in the Agreement. We find, therefore, that Howard was not returning from a leave of absence. Consequently, Carrier violated the Agreement when it permitted Howard to displace Mitchell.

**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 Carrier violated the Agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November 1964.