

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5016) that:

(1) Carrier violated the Schedule for Clerks on the Decatur Division, Decatur, Illinois, when on July 11, 1960, it denied Mr. J. B. Yuetten, Jr., the opportunity to displace a junior employe and sent him home as furloughed without pay.

(2) Mr. J. B. Yuetten, Jr., be paid eight (8) hours at straight time rate of position No. 14-A, Stockman, rate \$19.62 per day, for July 11, 12, 13, 14, 15 and 18, 1960.

(3) Mr. J. B. Yuetten, Jr., be paid the difference in rate of Storehelper \$18.40 per day and that of position No. 14-A, Stockman, for July 19, 20 and 21, 1960.

EMPLOYEES' STATEMENT OF FACTS: Mr. Yuetten, with seniority date of October 9, 1942, held assignment on position No. 10-A, Stockman, in the lumber yard, section (c), hours of assignment 7:00 A.M. to 3:30 P.M., with one-half hour off for lunch, Monday through Friday, rest days Saturday and Sunday, rate \$19.62 per day, from July 1 up to and including July 8, 1960, when on July 11, 1960, he was displaced from position No. 10-A by a senior clerk, Mr. J. E. Hall.

Mr. R. Smith, with seniority date of May 27, 1944, filled position No. 14-A, Stockman, in the locomotive store at Decatur, hours of assignment 7:00 A.M. to 3:30 P.M. with one-half hour off for lunch, Monday through Friday, rest days Saturday and Sunday, rate \$19.62 per day, from July 1 to 25, 1960, inclusive.

Upon being displaced by a senior employe on July 8, 1960, from the temporary position he was filling, Position No. 10-A, Stockman, Claimant Yuetten attempted to displace junior employe R. Smith, who was also filling a temporary vacancy, Position No. 14-A, Stockman. His request was denied notwith-

General Chairman Jackson's letter dated October 3, 1960, addressed to Manager Personnel). The Chief Clerk to whom the Committee referred was, at that time, Mr. W. R. Clark. Mr. Clark was in charge of office personnel in the General Storekeeper's office, and had no direct supervision over personnel at the Locomotive Store or the filling of vacancies there. Mr. Prater, as Local Chairman, was fully aware of that fact. Furthermore, the brief conversation between the Local Chairman and the Chief Clerk, during which Mr. Prater remarked to the effect they would be working the wrong man, did not constitute notification by claimant that he desired to displace a junior employee who was filling a temporary vacancy on Job No. 14-A at the Locomotive Store. An affidavit, signed by Mr. Clark, is attached hereto, marked Carrier's Exhibit D, and, by reference, is made a part of this submission.

Attention is directed to that part of the second paragraph of General Chairman Jackson's letter dated October 3, 1960, addressed to the Manager Personnel, reading:

"Also, Mr. R. Smith should have been on clerical position when he was to displace effective July 11, 1960."

That statement seems to lack meaning, but when considered in light of the following which appears in second paragraph of Local Chairman Prater's letter dated July 22, 1960, addressed to Mr. W. F. Brown:

"I stated then that Mr. R. Smith should be on his clerk's job on July 11, 1960."

it would appear that the employees rely upon the contention that since Mr. R. A. Smith was assigned to a clerical position in the General Storekeeper's office, he should have been required to work on that position on July 11, 1960. Such a contention had no bearing on the situation because Mr. Yuetten made no attempt to displace Mr. Smith, and even though Mr. Smith did have a regular assignment as a clerk in the General Storekeeper's office, the Carrier was not prohibited from using him to fill the temporary vacancy on Job No. 14-A, Stockman, from July 1 to 25, 1960.

The Employees have claimed that the Carrier violated the Schedule for Clerks when it denied Mr. J. B. Yuetten, Jr. the opportunity to displace a junior employee. Facts submitted hereinbefore by the Carrier show conclusively that Mr. Yuetten's failure to displace a junior employee on the position of stockman involved during the period in question was due to the fact that he made no effort to do so. A sustaining award in this case would, in effect, be saying the Carrier should have "exercised" claimant's seniority for him when he was displaced from Job No. 10-A, Stockman, effective July 8, 1960, which is neither required or permitted by the rules of the agreement.

The claim should be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, J. B. Yuetten, Jr., was employed by Carrier as a laborer in the Stores Department at Decatur, Illinois. He was used to fill a temporary vacancy on Job No. 10-A, Stockman, at the General Store from June 22, 1960 to and including July 8, 1960, when he was displaced therefrom by a senior employee, effective July 11. On July 8 he was also furloughed as a laborer in the Stores Department.

Mr. R. Smith, who was junior to Claimant, was used to fill a temporary vacancy on Job No. 14-A, Stockman, in the Locomotive Store at Decatur from July 1 to 25, 1960. On July 9, 1960, he was regularly assigned on position of Station Clerk, but did not assume same until after July 25, 1960.

Job No. 14-A, Stockman, was advertised for bids on July 7, 1960 and Claimant bid on that position on July 8, 1960. That position, however, was assigned to a senior employee. Claimant did not work from July 11 to 21, 1960.

Claim is made that Carrier violated seniority rules in failing to permit Claimant to displace Smith from the temporary position on Job No. 14-A, Stockman.

Carrier has separate Schedules in its Agreement for Clerks and for Freight Handlers. Rule 15 (d) of the Clerks' Schedule provides that freight handlers' bids shall be considered equally with Clerks' bids according to their seniority in Storeroom and Storeroom Yards, which embrace the position of stockman.

It is clear from the record that on July 8, Claimant was furloughed as a freight handler and, accordingly, Rule 13 (a) of the Freight Handlers' Schedule was applicable, and not Rule 20 of the Clerks' Schedule. In any event, however, what is involved in the claim for the temporary position No. 14-A is neither a reduction of forces nor the right to return to service, but, rather, the right to displace, which has to be exercised by the employee claiming the right. The essential question is, therefore, whether Claimant exercised his right to displace Smith on temporary position No. 14-A.

The record discloses that Claimant did not directly indicate his desire to displace Smith. The Organization does not so contend. It does, however, state that Claimant indicated his desire indirectly by his bid on July 8, 1960 for the regularly assigned position on Job No. 14-A, by his indication that he was going to time slip the job and by the General Chairman's conference with the Chief Clerk on July 9, in which the General Chairman told the Chief Clerk that the Carrier was going to work the wrong man.

Bidding on a regular assignment is not equivalent to exercising a desire to displace on a temporary position. Carrier was under no obligation to assume that an employee wished to fill a temporary job because he expressed an interest in the permanent job. Moreover, a bid for a bulletined job was handled by other officials of the Carrier than the one to whom a request to displace should be made. The proper person was the Locomotive Storekeeper, the supervisor in charge of the Locomotive Store.

Claimant cannot rest his case on the conference between the General Chairman and the Chief Clerk. The record reveals that the General Chairman told the Chief Clerk that Carrier was going to work the wrong man, not that Claimant desired the position. It is not clear how a vague opinion expressed by the Chairman to the Chief Clerk, who has no function in relation to displacement rights on this job, can be said to constitute an exercise of the right to displace, direct or indirect.

As to the statement that Claimant threatened to time slip the job, Carrier objected that this statement was never made on the property and appeared for the first time in the Employees' submission. Carrier's contention is borne out by the fact that such a claim was never made in the exchange of correspondence between the parties. Under the Rules in the Board's Circular No. 1, such evidence must be disregarded. Award 12942.

Claimant also argued that Smith, having displaced a junior employee on Position No. 16-A, effective July 11, 1960, should have been used in that position. The fact that an employee has exercised his right to displace does not affect Carrier's right to use that employee to fill a temporary vacancy. Smith, by displacing on Position No. 16-A, was in no different position than he had previously been in, i.e., a regularly assigned clerk being used to fill a temporary vacancy.

At the heart of the Claimant's case is the question of the obligation of the Carrier to "police the Agreement." Does Carrier have the obligation to see to it that all job opportunities are filled by the most senior employees, or must it apply seniority only when it is required to do so at the request of the employee? The obligation rests upon the interpretation placed on Rule 20 of the Clerks' Schedule and Rule 13 of the Freight Handlers' Schedule, which read as follows:

"RULE 20. REDUCING FORCES

(a) When reducing forces, seniority rights shall govern. When forces are increased, employees shall be returned to service in the order of their seniority rights. Employees desiring to avail themselves of the provisions of this rule must file their addresses with the proper official at time of reduction and advise promptly of any change in address. Employees failing to file their address with the proper official at the time of reduction or to return to the service within seven (7) days after being notified (by mail or telegram sent to the address last given) or give satisfactory reason for not doing so will be considered out of the service. Employees must exercise their seniority rights under this rule in the General Offices and on the Chicago, Detroit and St. Louis Terminal Divisions within two (2) days and on other divisions within four (4) days (Sundays and holidays not to be counted).

(b) In case of reduction of force or abolishment of position (except temporary positions), notice of same will be posted five (5) days prior to the effective date of such reduction or abolishment.

(c) Employees whose positions are abolished may exercise their seniority rights over junior employees. Other employees affected may exercise their seniority in the same manner.

RULE 13. REDUCING FORCES

(a) In case of reduction in force, employees relieved on account of such reduction will retain their right to re-enter the service, if again needed, the last man laid off being the first hired, provided they keep the immediate official in charge advised of their address. Should employees fail to return to work promptly when notified they shall lose their rights under these rules.

(b) Employees whose positions are abolished may exercise their seniority rights over junior employees. Other employees affected may exercise their seniority in the same manner."

These rules apply when forces are reduced or increased. There is an obligation on the part of the Carrier to reduce forces according to seniority, and there is no obligation on the part of the employee "to exercise" his sen-

iority. When forces are increased, however, employees are required to bid for the position, and Carrier is not required to automatically assign the most senior employee unless he bids for it.

When an employee seeks to displace, he has the obligation to make his preference known, and in doing so, he must notify the proper supervisor in the customary manner. Carrier cannot be expected to make personnel changes according to unexpressed or indirectly hinted expressions of employees. It requires no excessive effort by an employee who has the right to a job and wants it to say so clearly to the person in charge.

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 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 3rd day of March 1965.