

Award No. 18392

Docket No. TE-18748

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION DIVISION, BRAC
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Duluth, Missabe and Iron Range Railway Company, T-C 5743, that:

1. Carrier violated the Agreement when it failed to allow Telegrapher J. G. Economy to displace Telegrapher W. Clark, incumbent of the position of Supervisory Agent at Two Harbors, Minnesota.

2. Carrier shall compensate Telegrapher J. G. Economy the wages he would have earned as Agent, Two Harbors, Minnesota, less any wages received, guaranteed or otherwise, since November 15, 1968.

EMPLOYEES' STATEMENT OF FACTS:

(a) Statement of the Case

The dispute involved herein is predicated on various provisions of the collective bargaining agreement entered into by the parties effective January 1, 1953. Employees submitted the claim to the proper officers of the Carrier, at the time and in the usual manner of handling, as required by agreement rules and applicable provisions of law. The claim was discussed in conference between representatives of the parties on November 7, 1969.

The controversy arose on November 6, 1968, when the Carrier denied the Claimant's request to displace on the position of Supervisory Agent at Two Harbors, Minnesota.

Employees contended in the handling on the property, and now contend before the Board, that certain provisions of the collective bargaining agreement were violated. (These provisions are specifically set out in Section (d) below, Rules Relied On.) Carrier contended that (1) the company has the right to select Supervisory Agents; (2) in the circumstances, displacement rights for the Claimant do not exist; and (3) "permitting an employee to displace a supervisory agent would nullify the express con-

CLASS 1 Supervisory Agents; Agents; Assistant Agents; Agent-Telegraphers; Agent-Telephoners.

CLASS 2 Telegraphers; Telephone Operators (except Switchboard Operators); Telegrapher-Clerks; Printer Operators; C.T.C. Operators; Remote Control Operators; Tower and Levermen; all others coming within the scope of this agreement."

Article 23 — Reduction of Force

"(a) When a position is abolished, the regularly assigned incumbent thereof may within ten (10) days thereafter exercise seniority rights on any position occupied by a junior employe of the same class. If because of insufficient seniority or inability to handle any of the positions occupied by junior employes in such class, the employe whose position has been abolished may, within ten (10) days thereafter displace any junior employe in the other class, or if he so elects revert to the extra list. Any employe displaced under the provisions of this Article may exercise seniority in the manner herein prescribed.

"(b) When a position is temporarily discontinued (such as at the close of ore season or for any other cause) the regularly assigned incumbent of such position shall exercise his seniority rights in the class to which he belongs or revert to the extra list. If because of insufficient seniority to secure a regularly assigned position in such class, the employe whose position has been temporarily discontinued may displace the junior regularly assigned employe in the other class. When a Class 2 employe displaces an employe in Class 1, such Class 2 employe cannot exercise seniority in Class 2 for a period of one (1) year, except when unable to hold a regular position in Class 1."

The claimant in this case is a fully protected employe under the terms of the February 7, 1965 job stabilization agreement, Mediation Case No. A-7128, and is guaranteed compensation at the normal rate of the regularly assigned position he held on October 1, 1964, that of Telegrapher-Interlocker at Proctor.

Copies of the correspondence involved in the handling of this claim on the property are attached and marked as Carrier's "Exhibit A."

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant in this case was displaced from his regular assignment as Agent-Telegrapher at Proctor, Minnesota. Shortly thereafter Claimant requested that he be permitted to displace a junior employe assigned to the position of Supervisory Agent at Two Harbors, Minnesota. Claimant based his right to displace on Article 23(a) of the Agreement between the parties which reads as follows:

"When a position is abolished, the regularly assigned incumbent thereof may within ten (10) days thereafter exercise seniority rights on any position occupied by a junior employe of the same

class. If because of insufficient seniority or inability to handle any of the positions occupied by junior employees in such class, the employee whose position has been abolished may, within ten (10) days thereafter displace any junior employee in the other class, or if he so elects revert to the extra list. Any employee displaced under the provisions of this Article may exercise seniority in the manner herein prescribed."

The Carrier denied Claimant's request citing as its authority Article 10(f) of the said Agreement which reads as follows:

"When vacancies occur in the positions of Supervisory Agent, Assistant Agent, First and Second Trick Telegraphers, Dispatcher's Office, Telegrapher, Wolvin Building, Centralized Traffic Control Operators, and Remote Control Operators, applicants for such vacancies will be considered on the basis of qualifications and seniority, qualifications to be the first consideration. Under the provisions of this paragraph, selection and assignment to be made by the Management after consultation with the General Chairman."

The Carrier claimed that Article 10 (f) excepted the position of Supervisory Agent from the displacement provision of Article 23 (a).

We do not agree. Article 10 (f) provides a method for filling vacancies in certain positions other than straight seniority. It does not deal with displacement or except those positions from the general displacement provisions of Article 23(a).

While we may agree that it might be more reasonable to prohibit displacement on positions that are filled by some specially prescribed method, we have no authority to change the Agreement by interpretation.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1971.

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