



Award No. 18452
Docket No. TE-18756

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, TC-5746, that:

1. Carrier violated the agreement when it permitted Telegrapher H. T. Olson to be improperly displaced.
2. Carrier shall compensate Telegrapher H. T. Olson one day's pay on January 6, 7, 8 and 9, 1969, at the rate of the position of Agent-Operator Saginaw, Minnesota.

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 11, 1969.

The controversy arose on January 6, 1969, when the Carrier failed to allow the claimant to work at least four additional days on the position of Agent-Operator at Saginaw, Minnesota. Beginning with January 4, 1969, the position was temporarily vacant. On that date, claimant was the senior, available, extra man. He was then placed on the position, but on January 6, 1969, Carrier required his displacement by a senior extra employee.

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 ultimately limited its resistance to the claim by contending that the claimant was not qualified to perform the duties of the position on the four claim dates.

position may retain that position for a period of fifteen (15) working days after which he may be displaced by a senior qualified extra list employee."

ARTICLE 21 Failure to Qualify

"An employee assigned to a position covered by the scope of this agreement who fails to qualify after a fair trial will not be permitted to relieve the employee holding his former position, but will revert to the extra list with the right to bid on any vacancy or new position."

A copy of the correspondence involved in the handling of the claim in this case is attached and marked as Carrier's "Exhibit A."

(Exhibits not reproduced.)

OPINION OF BOARD: The regular occupant of the Agent position at Saginaw, Minnesota, at about 11:30 A. M. Saturday, January 4, 1969, reported ill and unable to continue work. He asked to be relieved until he reported ready for work. The position in question is a six-day position with Sunday as rest day.

Carrier could not immediately locate the senior qualified extra employee, and notified Claimant Olson, a junior extra employee, to protect the position for the remainder of the one day, January 4. Later, the senior extra man was contacted and assigned to the vacancy beginning Monday, January 6.

Claimant Olson contends that under Article 18(e) of the Agreement he was entitled to remain on the vacancy for five days before the Carrier could displace him with a senior extra employee.

Article 18(e), in pertinent part, reads as follows:

"A senior extra employee may exercise his seniority to displace a junior extra employee who has been on an assignment for five (5) working days or longer."

Olson's claim was declined and the handling of the resulting dispute generated considerable debate, much of which seems to be irrelevant.

A careful study of the entire record convinces us that this is not a case for application of Article 18(e). There was no exercise of seniority. Rather, we think, there was an assignment of the first available extra employee for one day to meet an emergency. We do not believe such an emergency assignment was intended to give the employee any rights beyond the duration of the emergency. Therefore, the Carrier did not mishandle the situation, and Olson's Claim cannot be sustained.

Obviously, this decision is confined to the facts of this case and is not to be considered as a precedent in other cases where the facts may be different.

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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

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