

Award No. 18635
Docket No. CL-18977

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6867) that:

1. Carrier violated the rules of the Clerk's Agreement effective September 1, 1952, as amended, particularly Rule 3(b) when it called and used a junior employe to cover the Chief Yard Clerk's position at Manchester, N.H. on Tuesday, September 16, 1969.

2. Carrier shall now be required to pay James B. Sughrue the senior employe a day's pay amounting to \$27.12.

EMPLOYEE'S STATEMENT OF FACTS: On September 16, 1969 it was necessary for Carrier to obtain an available employe at punitive rate to fill the first trick, 6:30 A.M. - 3:30 P.M.; chief yard clerks position at Manchester, N.H. rated at \$27.12 daily.

The seniority district involved embraces yard and freight house work mainly in the Cities of Lowell, Nashua, Manchester and Concord, New Hampshire with all points easily reached by toll and first class highways.

Carriers, Chief Clerk to Superintendent headquartered at Boston, Mass. undertook the task by telephone of making an assignment and after looking over the roster and unavailable working employes gave the work to an available Yard Clerk, D. Morse with a seniority date of 3-18-63.

Claimant, J. B. Sughrue seniority date, 11-25-46 when informed of the above wrote the Superintendent under date of Oct. 24, 1969 as follows:

"W. V. Furey
Supt. BMRR
Boston, Mass.

I wish to claim a days pay for Sept. 16, 1969 for not being called to cover in place of Arthur Omand as Chief Yard Clerk at Man-

ings he was barred from driving a motor vehicle in the state of New Hampshire. Thus, he advised the Superintendent's office (as explained in Carrier's Exhibit "A") that he did not desire to be called for extra work at Manchester, New Hampshire in the future.

After having been convicted of the motor vehicle driving violation on April 7, 1969, at the request of the claimant and representatives of the petitioning organization, the Superintendent agreed to a prearranged job exchange with a junior yard clerk whose position worked in the state of Massachusetts only, at Lowell, Mass., where the claimant resided. See Exhibit "A". As of the date of this submission the license revocation is still existing insofar as the state of New Hampshire is concerned.

The events of July 17, 1970, described in Exhibit "B" further evidence claimant's unavailability for the vacancy here claimed. (Exhibits not reproduced).

OPINION OF BOARD: In the handling of the dispute on the property Carrier contended that Claimant had notified those in charge that he was not interested in protecting any vacancies at Manchester, N.H. This contention was denied by the Organization and the record does not show that in the handling on the property the Carrier produced any evidence in support of its contention. Exhibits "A" and "B", attached to Carrier's submission, are dated subsequent to the dispute being referred to this Board and may not be considered by the Board.

Based on the record as established in the handling of the dispute on the property, and in the absence of admissible evidence that Claimant had notified those in charge that he was not interested in working at Manchester, the claim will be sustained.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July 1971.

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