

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19443
Docket Number CL-19335

Gene T. Ritter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6962)
that:

1. The Carrier violated the Clerks' Agreement when it refused to allow R. L. Zahorcik to return to his position of Chief Clerk, Car Accounting after being relieved from an excepted position.
2. The Carrier further violated the Clerks' Agreement when it permitted R. L. Zahorcik to exercise his seniority rights and displace a junior employee.
3. R. L. Zahorick shall now be allowed to return to his former position of Chief Clerk, Car Accounting and shall be compensated for any and all resulting wage losses sustained, or the difference what he would have been paid for so working the position of Chief Clerk and what he was paid for working as he did for the period beginning April 6, 1970 and for as long as the violation continues, or until such time as corrective measures are applied, plus the overtime rate for each Saturday and Sunday required to work, which normally under the Agreement would have been his assigned rest days and eight (8) hours pay, for each Thursday and Friday that he was not permitted to work, as well as interest payment at the current rate, on the amount of reparations due.
4. The Carrier shall now also compensate E. Mayer, the employee here adversely affected, the overtime rate for each Thursday and Friday required to work, which normally under the Agreement would have been his assigned rest days and eight (8) hours pay, for each Tuesday and Wednesday that he was not permitted to work, as well as interest payment at the current rate, on the amount of reparations due, effective April 7, 1970 and continuing so long as the violation continues, or until such time as corrective measures are applied.

OPINION OF BOARD: The herein Claim is a two-part Claim. First, Petitioner advances an allegation that the Agreement was violated when Mr. R. L. Zahorick was not permitted to return to his excepted position of Chief Clerk, Car Accounting, after being relieved from the official position of Supervisor of Car Operations. Secondly, Petitioner alleges that the Agreement was violated when Carrier permitted Mr. Zahorick to displace Mr. E. Mayer from General Clerk Position No. 265 during the period April 7, 1970 to June 23, 1970. Petitioner bottoms its claim on Rule 18 of the Agreement. Rule 18 provides:

"(a) An employe returning after leave of absence granted in accordance with the provisions of Rule 35 or an employe relieved from excepted or official position, may return to former position providing it has not been abolished or senior employe has not exercised displacement rights thereon or may, upon return or within five (5) days thereafter, exercise seniority rights on any position bulletined during such absence.

(b) In the event employe's former position has been abolished or senior employe has exercised displacement rights thereon, the returning employe will be governed by the provisions of Rule 19 and will have the privilege of exercising displacement rights over junior employes, if such rights are asserted within five (5) days after his return."

Mr. R. L. Zahorick entered Carrier service in April 1956. Ten years later in January, 1966, he was appointed to the excepted position of Chief Clerk - Position No. 30. Twenty-one months later he was again promoted to the official position of Supervisor of Car Operations. In April 1970, at his own request, he was relieved of his official position. Under the provisions of Rule 18 he requested reassignment to his excepted position of Chief Clerk - the excepted position he occupied immediately prior to his promotion to an official position. The Carrier refused this request. He, subsequently, displaced E. Mayer from fully-covered General Clerk's Position No. 265. He occupied this position until June 6, 1970 when he was the successful applicant for the open Yard Clerk Position No. 375. Clerk E. Mayer returned to position of General Clerk No. 265 on June 23, 1970.

The first issue to be decided is: does Rule 18 grant Zahorick the right, when relieved from an official position, to return to an excepted position. It is admitted in the record that while the Carrier is required to bulletin the excepted position of Chief Clerk it, nonetheless, has the right to appoint whomever they wish to that position without regard to seniority. Fact of the matter is, when they appointed Zahorick's successor to the position he had no seniority at the time of his appointment. A close examination of Rule 18 indicates that "official" and "excepted" positions are given equal status in its application. It is a special rule and we believe that its intent is designed to cover movements from either excepted or official positions to fully-covered positions and not from official positions to excepted positions. The purpose of the rule is to protect promoted employes to positions to which their seniority entitled them prior to promotion. The Chief Clerk's position, being an excepted position, is not one to which seniority applies.

When Zahorick was relieved from his official position he had two options; he could either return to his former position, or exercise seniority rights on any position bulletined during his absence. In this case his former position would be the position that he vacated prior to his appointment to the Chief Clerk position as it was from this position that he was initially placed into a status covered by Rule 18. Accordingly, we find no violation of the Agreement account Carrier's failure to permit R. L. Zahorick to displace on the excepted position of Chief Clerk, Car Accounting.

Parts (1) and (3) of the Claim will be denied.

With respect to Parts (2) and (4) of the Claim, we note that effective April 7, 1970, Zahorick displaced on General Clerk's Position No. 265. The Organization argues that General Clerk's Position No. 265 was not a "position bulletined during such absence" (the absence of Zahorick) while he occupied excepted and official positions; thus, this displacement was improper.

In Petitioner's initial submission to this Board the Organization states:

"Since the Manager Revenue & Car Accounting took exceptions to the claim filed on behalf of E. Mayer in that he was not the designated representative for handling claims filed on his behalf, to avoid any difficulty in the future, we filed a separate and apart claim for this employe with another representative of the Carrier. Consequently, the statement of claim on behalf of Claimant E. Mayer should not be given any consideration and will not hereafter be mentioned."

In view of this statement, we are left with no alternative but to dismiss Parts (2) and (4) of the Claim without prejudice.

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;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied and dismissed as indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of October 1972.