

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20209

Docket Number CL-20253

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees
(
(Pacific Fruit Express Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7343) that:

(a) The Pacific Fruit Express Company violated the current Clerks' Agreement when it permitted employe Gordon W. Smith to displace employe R. L. McArthur from Position N-1 Agent Clerk; and,

(b) The Pacific Fruit Express Company shall now be required to compensate Mr. McArthur for all earnings made by Mr. Smith on Position N-1 beginning August 19, 1971 and continuing until the former is placed thereon.

OPINION OF BOARD: The Employees construe Rule 9 (e) of the Agreement to provide that "an employe returning from any type of leave absence must, if he desires to displace, do so prior to returning to his regular position. Once he returns to his regular position all displacement rights are forfeited." The Carrier does not contest this construction of the rule, but asserts that a rule violation has not been demonstrated.

Certain facts are not disputed. On August 12, 1971, the Claimant was awarded the position of N-1 Clerk, which had been bulletined on August 6 but which was not scheduled to be a working position until August 19. However, before Claimant worked the position, the Carrier honored the displacement notice of Mr. Gordon Smith, who was senior to Claimant and who was on vacation during the bulletin of N-1. Mr. Smith, the incumbent of the position of Chief Clerk, returned from vacation and worked the Chief Clerk position on August 17 and 18, 1971; he then went to N-1 on August 19, the first day it was scheduled to work.

The issue to be resolved, under the Employees' theory, is whether Mr. Smith did in fact work his Chief Clerk position before he issued his displacement notice in respect to the N-1 position. In initiating the claim on the property, the Claimant asserted that the Smith displacement notice was not issued until August 19, although he had worked on his Chief Clerk position for the two previous days of August 17 and 18. The Carrier's District Agent, in denying the claim,

controverted August 19 as the date of the displacement notice and established that it had in fact been issued on August 17; in addition, the District Agent asserted that Mr. Smith "returned from his scheduled vacation Tuesday, August 17, as Chief Clerk and immediately displaced" to position N-1. This latter point was the subject of further elaboration in a February 18, 1972 letter by Carrier's highest officer:

" this is not an ordinary case of an employe returning from vacation and going back to his own job and then waking up, so to speak, and wrongfully displacing a junior person from a job assigned during his absence. This is rather the exceptional type of case that proves the rule inasmuch as the senior man returned, saw at once that a job N-1 had been advertised to start two days thereafter, exercised his seniority right immediately to N-1 and stayed on his own job until N-1 commenced at which time he promptly assumed it. "

In appraising the foregoing, and the whole record, we find no basis for concluding that the sequence of Mr. Smith's actions on August 17 was return to work first and issuance of displacement notice afterwards. The Employees' Submission argues from the conclusion that such sequence did obtain factually, but nowhere do they cite any evidence to support or explain the conclusion. Indeed, except for the Claimant's erroneous statement that the displacement notice occurred on August 19, the Employees have submitted no information at all about the timing of Mr. Smith's displacement notice in relation to his commencing work on the Chief Clerk position on August 17. Consequently, for lack of evidence in support of the essential fact, we shall dismiss the claim.

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

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The claim is dismissed.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of April 1974.