

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21114  
Docket Number CL-21120

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7833) that:

1. Carrier violated the Clerks' Rules Agreement which became effective March 1, 1973, when it terminated Mr. Kenneth L. Maddox's services in Seniority District No. 27 and removed his name from that roster in violation of Rules 3, 18 and related rules of the Clerks' Agreement. (Carrier's file 205-4855)
2. Carrier shall now be required to compensate Mr. Maddox for eight hours' pay at the pro rata rate beginning December 18, 1973, and continuing each subsequent day thereafter. Claim is in addition to any other compensation Mr. Maddox might receive from the Carriers, who are parties to the Agreement which became effective March 1, 1973, until the violation is corrected by restoring Mr. Maddox's name to Seniority District Roster No. 27.
3. Carrier shall also be required to reimburse Mr. Maddox for moving expenses in the amount of \$537.40 account of Carrier's arbitrary action and abuse of discretion.
4. Carrier shall also be required to pay Mr. Maddox six percent (6%) interest compounded annually, on the monies involved in this claim until the violation is corrected.

OPINION OF BOARD: The parties agree that the Claimant has a seniority date of May 3, 1972, as a Telegrapher-Clerk, with the Texas and Pacific Railway Company, Seniority District No. 53, Texarkana, Texas; that he was furloughed from that company in October 1973; and that, from October 23 through December 17, 1973, he worked a Telegrapher-Clerk Vacation Relief assignment, on the property of the herein Carrier, the Missouri Pacific Railroad Company, at Little Rock, Arkansas, in Seniority District No. 27. On December 17, 1973, the Claimant was separated without a hearing from his employment with the Mo Pac, on the basis that he was an employee with less than sixty days service whose application for employment had been disapproved under Rule 38(a).

The claim is that the severance of the Claimant without a hearing was violative of the Agreement, because his employment date of May 3, 1972 with the Texas and Pacific applies to his service with the Mo Pac and he was thus entitled to a Rule 18 hearing which applies to dismissal of employees with more than sixty days of service. These assertions are based on the contention that

the March 1, 1973 Agreement between BRAC and the Mo Pac Railroad Company, the Texas and Pacific Railway Company, and the Missouri-Illinois Railroad Company applies equally to all clerical employees of the three Carriers, subject to certain exceptions not herein pertinent; and that under such Agreement a clerical employee may move from a seniority district of the Texas Pacific to a seniority district of Mo Pac. The Employees contend further that the Claimant made a verbal request to be placed on the Vacation Relief assignment and that the situation is therefore governed by Rule 6(d) of the Agreement which provides that:

"(d) Employees filing applications for positions bulletined on other districts or on other rosters will, if they possess sufficient fitness and ability, be given preference over non-employees."

On the property the Mo Pac asserted that the Claimant had the status of a new Mo Pac employee, effective October 22, 1973, thus making a denial of the factual basis of the alleged verbal request.

Obviously, the parties' positions raise a threshold issue of whether the record establishes that in fact the Claimant made a verbal request to be assigned to the position in question, as contended by the Employees; and since this is the factual basis of the claim, the burden to establish such fact is of course upon the Employees. The sole evidence of record in this regard is Employees' Exhibit No. 8, which is a October 23, 1973 "Assignment Notice" stating that the Vacation Relief position is assigned to the Claimant -- "senior unassigned Teleg-Clerk." This document on its face is compatible with both sides of the issue under consideration, either that a verbal request was made or that one was not made, and the document thus has no probative value in proving the fact in issue. The Carrier challenged the factual basis of the alleged verbal request in its first letter of denial of the claim and there was thus ample notice that proof of the request was necessary. Although a letter or statement from the Claimant, reflecting some information on when and to whom the request was made, would have been an obvious step in assembling such proof, the record is barren of a statement of any kind from the Claimant to support the alleged verbal request. In these circumstances, and in view of the Carrier's early, clear challenge to the factual basis of the claim, it cannot be concluded that the Employees' evidence satisfactorily establishes the fact of the verbal request.

In view of the foregoing, the claim will be dismissed. It is noted, however, that the claim is dismissed solely on evidenciary grounds and that no issue concerning the interpretation of the Agreement has been reached.

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

The claim is dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Paulsen  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July 1976.