

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21353  
Docket Number CL-21405

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and  
( Station Employees  
(  
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,  
GL-7999, that:

1. The Carrier violated the effective Clerks' Agreement when it refused to permit Clerk Doretha Campbell to exercise her displacement rights over a junior employe, without just cause, and thereby deprived her of her seniority rights:

2. The Carrier shall now be required to compensate Clerk Doretha Campbell for eight (8) hours' pay at the pro rata rate of Position No. GT 469, commencing with March 14, 1974 and continuing for each and every day thereafter, five days per week, Monday through Friday, that she is denied her right to displace on Position No. GT 469 which is held by a junior employe.

OPINION OF BOARD: On March 14, 1974 Claimant sought to displace a junior employe on Position GT-469, Clerk (to Freight Service Engineer). The principle duties of this position had been defined as:

"Preparation of reports and assembly of necessary data, statistical work, handling embargoes and clearances. Provide disposition as required on loaded cars and such other duties as may be assigned. Must be a typist."

Claimant's displacement request was denied on the same day by the Supervisor and was confirmed in writing the following day by the following statement:

"In our conversation on March 13, 1974 at 5:05 P.M. you admitted and our records verified that you had no prior experience and completely unfamiliar with the position. Therefore, your displacement was rejected."

The junior employe whom Claimant wished to displace had been in the position for eight days and, by Carrier's statement, "...was being trained on the position with substantially full time assistance by a supervisor."

Rule 7 of the Agreement specifies that the exercise of seniority in all instances is subject to Rules 8 and 16. Those Rules provide in pertinent part:

"RULE 8

PROMOTION, ASSIGNMENTS AND DISPLACEMENTS

Employees covered by these rules shall be in line for promotion. Promotion, assignments and displacements shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

NOTE: The word 'sufficient' is intended to more clearly establish the right of a senior employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability. An employee shall be considered as having adequate fitness and ability when he has reasonable fitness and ability to perform the duties of a position under proper supervision and direction, and need not have immediate fitness and ability resulting from actual past experience in performing the work incident to a particular position.

RULE 16

TIME IN WHICH TO QUALIFY

(a) Employees making application for bulletined positions or exercising displacement rights to positions held by junior employees will be allowed sixty (60) work days in which to qualify.

\* \* \* \*

(c) Employees will be given full cooperation of department heads and others in their efforts to qualify."

Carrier's position in this dispute is based on two major points: the Claimant's admission that she did not have the ability to perform in this position immediately and second an historical differentiation between bids and displacements.

On the first point it is interesting to note that Carrier raised no reasons for denying Claimant's displacement except that she admittedly knew little about the position and had no experience in it. Carrier belatedly (after completion of the handling on the property) attempted to analyze the job requirements and skills needed; such material, both argument and evidence, may not be considered in the determination of this dispute under Circular No. 1 and in accordance with a host of Awards of this Division (including Awards 19722, 11027, 19746 and many others).

A number of comments on fitness and ability in this dispute must be noted. First, it is unusual and unacceptable to deny a senior employe a position solely on the basis of lack of experience, particularly in the light of Rule 16 supra. Again, in a large number of disputes this Board has affirmed the position aptly put in Award 4026:

"Therefore, experience cannot be a consideration in determining the sufficiency of the initial fitness and ability for promotion. Since lack of experience appears to be the only reason Claimant was not assigned the position, Carrier violated the Agreement since Claimant should have prevailed because of her seniority."

It seems wholly unreasonable for Carrier to deny Claimant the right to the sixty-day period provided in Rule 16 while according that privilege to a junior employe who had only been in the position for eight days. It is evident that Carrier's position, to be sustained, must be supported by credible evidence of record to show a reasonable basis for the disqualification (Award 19660). We do not find such evidence in this case.

Carrier makes the point in its submission that in virtually all displacements (on this position at least) the displacement request had been approved because the prospective incumbent had, at some time, "bid" onto the assignment: had prior experience. As indicated above, Carrier makes the point that historically the distinction existed between displacements and bids in that an employe bumping must be able to fill the position immediately as distinguished

from an employee bidding for the job. The identical issue has been considered by this Board recently in Award 21067 which construes the applicable Rules, including the Note to Rule 8. We concur in the reasoning on this issue expressed in that Award, particularly with respect to the mandatory implications of Rule 16 (a) and agree that an employee need not have immediate fitness and ability resulting from actual past experience in the position. We also cannot reconcile the distinction Carrier makes between "bidding" and "bumping" in the light of the clear and mandatory rules of the agreement. To accept Carrier's reasoning would effectively modify the language of Rule 8 and nullify the clear mandate of Rule 16. For all the foregoing reasons, the Claim must 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.

A W A R D

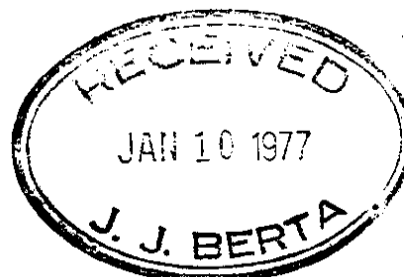
Claim sustained.

ATTEST:

*A.W. Pauls*  
Executive Secretary

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

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



NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 21353

DOCKET NO. CL-21405

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and Steamship Clerks,  
Freight Handlers, Express and Station Employees

NAME OF CARRIER: Elgin, Joliet and Eastern Railway Company

Upon application of the representatives of the Employees involved in the above Award, that this Division interpret the same in light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

The positions of both Carrier and Petitioner with respect to the Organization's request for interpretation have been carefully reviewed. It is apparent that there were substantial misunderstandings on the part of both parties with certain aspects of this dispute.

At the outset, it must be emphasized that Carrier is in error in contending that its liability ceased when Claimant failed to bid on the position in question on May 13, 1974. The language of the award is clear and the intent was not as Carrier contends; the liability ceased only when an employee senior to Claimant exercised displacement rights to the position in question. The record indicates that the date of such displacement by a senior employee was September 9, 1974. Claimant was not obligated to bid for the position subsequent to Carrier's initial denial of her displacement request and the award made no findings supporting Carrier's contrary argument.

From a study of the record, Petitioner is in error in its contentions with respect to Carrier allegedly attempting to mitigate the damages. Carrier has clearly indicated that it is complying with Interpretation No. 1 to Award 21067 which governs this case as well.

Claimant is entitled to eight hours' pay at the pro rata rate of Position GT-469 from March 14, 1974 to September 9, 1974.

Referee Irwin M. Lieberman, who sat with the Division as a neutral member when Award No. 21353 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A.W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1978.