

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22177
Docket Number CL-21780

Herbert L. Marx, Jr., Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8176, that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement, Rules 26, 27 and 33 thereof, when it refused to accept Bonnie Bruce's application for Position No. 694 (p) Clerk to Terminal Superintendent; and,

(b) The Southern Pacific Transportation Company violated the current Clerks' Agreement when it failed to assign Bonnie Bruce to Position No. 694 following investigation held under Rule 50 thereof at which the testimony adduced revealed that she was entitled to be placed thereon by the provisions of Rules 26, 27 and 33; and,

(c) The Southern Pacific Transportation Company shall now be required to place Bonnie Bruce on Position No. 694 and give her cooperation in her efforts to qualify in accordance with Rule 27 of the Agreement.

OPINION OF BOARD: This case disputes Carrier's failure to award Position 694, Clerk to Terminal Superintendent, to Claimant. However, it is undisputed that before the junior employee Carrier had assigned to this position began work on it, she was displaced by an employee senior to the Claimant and, for the duration of time which this claim encompasses, Claimant's seniority would not enable her to hold the disputed assignment.

In an early Award, No. 3412, the Board held:

"This is a claim for violation of the Agreement between the Organization and the Carrier by assigning work, covered by the Scope Rule, to persons holding no seniority rights under the agreement.

"Notice of intention of the Organization to file an ex parte submission of the claim was served on this Board under date of April 16, 1946.

It appears from the record that the facts giving rise to the dispute ceased to exist in February 1946.

It is clear, therefore, that the claim was moot before the jurisdiction of this Board was invoked. The Organization, nevertheless, urges the Board to accept jurisdiction as an application for interpretation of the Agreement. In support of its position, the Organization cites Award No. 2670. That was a case where the Carrier asked this Board to construe certain provisions of the agreement as applied to certain situations. The Board, of course, has jurisdiction under the Railway Labor Act to take jurisdiction of such applications.

This, however, is no such application. It is a claim based upon an alleged violation of the Agreement. The facts upon which violation of the Agreement is predicated having ceased to exist before the jurisdiction of this Board was invoked, the dispute is moot and should be dismissed. See Award 619."

The Board likewise finds here that this dispute is moot. Claimant's seniority would never have entitled her to work the position in question, leaving the entire issue and dispute academic. Consequently, the claim will be dismissed.

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 claim be dismissed.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1978.