

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22376
Docket Number CL-22167

Joseph A. Sickles, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
{ Steamship Clerks, Freight Handlers
{ Express and Station Employes
{
(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8452) that:

(a) The Carrier violated the Rules Agreement, effective December 1, 1949, as amended January, 1958, particularly Rule 1(c), when it assigned a junior employe to Chief Clerk's Position #2, located at Blue Island Station. Senior Claimant, Helen W. Grills, has equivalent qualifications and had requested the assignment.

(b) The Carrier be required to compensate Helen W. Grills for the difference in rate of pay between her Position #204 and Position #2, effective February 18, 1976 and continue each day until she is properly assigned to Position #2, Chief Clerk.

OPINION OF BOARD: In February, 1976, Carrier posted a permanent vacancy for a position which it contends is covered by Rule 1(c):

"(c) The following positions are excepted only from the promotion, assignment, displacement and hours of service rules of this agreement and the holders thereof shall continue to be paid flat monthly rates to cover all services rendered. When filling vacancies in such positions, the senior qualified employee in the seniority district where the vacancy occurs who desires same will be assigned to such vacancy."

Nine (9) individuals submitted requests for the position, and Claimant was the most senior of that group. However, the position was awarded to the "fourth oldest" of the interested applicants.

In their submission, the Employees stated the issue to be whether Carrier can:

"...completely ignore the specific language of Rule 1(c) when it assigned Position #2, Chief Clerk, to a junior employee, instead of assigning the senior employee, the Claimant, whose past work experience has obviously qualified her for this position."

The Carrier argues that past practice concerning permanent vacancies clearly supports its actions here, whereas the last portion of Rule 1(c) has only been applied (in the manner urged by the Employees) concerning temporary vacancies.

The Organization asserts that prior acquiescence in appointments was merely indicative of "concurrence in qualifications and/or seniority," but was not an acceptance of a practice clearly in violation of the agreement. In other instances, the adversely affected employees chose not to protest the matter.

Both parties have presented to us cited authority in support of their positions, but those Awards have not been particularly pertinent to this dispute, because this controversy stems from the fact that the rule as presented is - in our view - contradictory in its terms. Each party has suggested that if we fail to adopt its interpretation, we, in essence, are writing out of existence a part of the agreement, and to some extent, each side may be correct.

Clearly, the rule states that the position in question is excepted from the promotion rule (among others), but it then states a specific manner in which a vacancy in the position will be filled. A repeated reading of the rule almost suggests that it was initially designed to cover incumbents (when written) but was also to provide for future vacancies. However, we may not base an Award upon such a speculative presumption.

We have not lost sight of Carrier's assertion that the final phrase has been used only regarding temporary vacancies, but Rule 1(c) is not so limited. Nor have we ignored Carrier's assertion of past practice and the Employees' contentions in that regard.

In the final analysis, we return to the Rule, as written. Regardless of the extent of the conflict in its context, the fact remains that it contains a specific mandate to assign the senior qualified employee. Carrier, in its brief, questions the logic of exempting certain rules if the senior employee has the right to the position. We have struggled with that concept at length, and can only state that we did not write the rule; but we are charged with the responsibility of interpreting it. Carrier did not dispute the Claimant's qualifications on the property and thus, 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: AW. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1979.