

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22417
Docket Number CL-22353

Louis Yagoda, 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-8500) that:

1. The Carrier violated the effective Clerks' Agreement when it failed and refused to permit Clerk D. D. Smith to participate in a rearrangement of forces in accordance with his seniority but promoted a junior employee in preference to Mr. Smith.

2. The Carrier shall now compensate Mr. Smith for the difference between the rate of pay of his assignment, JT-233 and the rate of Position JT-203, the position which was denied him, commencing on September 15, 1976 and continuing for each and every day thereafter that a like violation occurred.

OPINION OF BOARD: We find nothing in the Rules cited or in the arguments put before us to persuade us that the statements of the seniority principle enunciated in Rules 3, 7 and 8 have been set aside for cases of temporary or short vacancies. Rule 11 states that short vacancies of this kind need not be "bulletined", but this is not the same as saying that they may be made in disregard of the seniority rule already established for all "vacancies" (without any qualification as to the vacancy's duration). To make certain that this is understood, Rule 11 expressly mandates that such vacancies shall be filled in compliance with Rules 8 and 19. Rule 8 is the general seniority requirement and Rule 19 more explicitly applies it to furloughed employees.

The Carrier is unpersuasive in its efforts to depict Rule 45 as having expunged and put itself in the place of the seniority rule for vacancies, particularly the short vacancy so specifically put under the seniority standards in Rule 11. Rule 45 does not, it is true, mention seniority. But (a) it does not have to repeat a rule

already specifically laid down elsewhere and (b) there is nothing in Rule 45 which intrudes on, qualifies or disturbs the seniority rule.

The subject of Rule 45 is how to deal with the problem of absorbing or evading overtime assignments. The statements therein that an employe assisting another one be from the same office, location and seniority district "without penalty" (that is, the payment of punitive or overtime rates) in no way releases Carrier from the seniority obligation imposed on him elsewhere in the Agreement. Claimant, in the instant matter, was in the same office, location and seniority district.

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:

A. W. Pauls
Executive Secretary

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