

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22887
Docket Number CL-22790

George S. Roukis, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8694) that:

1. Carrier violated the Agreement when it removed Miss D. L. Cook from the 11:59 P.M. Bill Clerk position without cause or proper notification.

2. Carrier shall compensate Miss Cook one (1) day's pay at the time and one-half rate of \$51.77 for April 8, 1977, Good Friday Holiday. (Total amount \$77.65)

OPINION OF BOARD: The pivotal question in this dispute is whether or not Carrier violated Rule 18(a) when it informed Claimant on April 8, 1977 at about 10:35 P.M. that she would not work the 3rd trick bill clerk's position that night.

Carrier contends that she was unqualified to remain in that position, but apprised that she could have worked the 3rd trick yard clerk's position, while Claimant argues that she was uninformed of the alternative position. Rule 18(a) which is pertinent to this dispute is referenced as follows:

"(a) Subject to Rule 7, where guaranteed extra boards are not established or are exhausted, unassigned employees in the seniority districts as defined in Rule 4, who have, in accordance with Rule 17, indicated a desire to protect temporary vacancies or relief work, shall be given first preference, on a seniority basis, to:"

In our review of this case, we agree with Carrier that it had the sole right to determine Claimant's fitness and competency, subject to Agreement qualifications and its decision to remove Claimant from the 3rd trick bill clerk's position was certainly permissible, when it was firmly established that she could not handle this job. She needed the assistance of a qualified off duty employee to perform the position's duties on April 7, 1977 and this aid was indicative of her inability to fill this position.

Similarly, we do not find from a careful examination of the record that it was a well established practice on the Rocky Mount Division that two hours prior to the starting time is the deadline for the exercise of seniority and/or minimum calling time for vacant positions. Outside of the District Chairman's September 8, 1978 letter we have no other confirming proof of this asserted practice.

On the other hand, we do find persuasive merit to Claimant's contention that Carrier didn't prove that it notified her that she could work the 11:59 yard clerk's position and support for our conclusion is found in the language of the Carrier's notation which is quoted hereinafter and the want of positive verification in the record:

"Miss Cook expecting to work bill clerk- BUT Mr. Robbins says she will have to set-in on job more before she works it again (on her own) also she needs to qualify more on carry-all before working it, so as it stands at this time she could only pull Burns on 3rd trick yard clerk. Call man for each job. Both Osterkamp and Burns are expecting to work."

In fact, a literal reading of the sentence, "Call man for each job" indicates that Mr. Burns was already pre-selected to work that position. Moreover, when this statement is construed within the interpretative context of Rule 18(a) (supra) we do not find that she was given preference, on a seniority basis, consistent with the manifest spirit of this provision.

In Third Division Award 12146 involving a factually different, but conceptually analogous situation, we ruled in part:

".... Carrier had a responsibility to make known to him the position available prior to the sign-out period on October 12. The preference expressed by Mr. Weiss for station service is only suggestive and not mandatory. Mr. Weiss was entitled to the opportunity of that assignment."

We believe this holding applicable to this dispute and thus we will sustain the claim.

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:


Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1980.