

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22995
Docket Number CL-22660

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Detroit, Toledo and Ironton Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8630)
that:

(a) The Carrier violated the Rules Agreement dated May 1, 1966, as amended January 1, 1971, particularly Rules 1, 3, 6, 11 and 16, the February 7, 1965 Job Stabilization Agreement (I.C.C. Finance Docket No. 21989 decided October 18, 1964), among other rules and agreements, when it failed and refused R. E. Brody, senior employee, to displace G. R. McMillin on position of Lead Car Repair Clerk, effective September 15, 1976, at 8:00 A.M. Claimant Brody holds seniority date of 4/15/48 and junior employee McMillin, seniority date of 5/29/53.

(b) The Carrier shall now be required to compensate R. E. Brody \$54.72 per day at the pro rata rate, establish his guarantee, plus any other compensation due him commencing September 15, 1976, and continuing for every work day until violations are corrected and adjustment made.

OPINION OF BOARD: Along with certain other positions, the position then occupied by the Claimant was abolished in September of 1976, and he filed a displacement form - notifying the Carrier of a desire to displace to the position of Lead Car Repair Clerk, then held by a junior employee.

The Carrier denied the request because, it asserted, Claimant's fitness and ability was not sufficient to assume the responsibility for coordinating AAR billing operations inasmuch as prior knowledge of such operations was required.

Thereafter, a hearing was requested and was held, however the Hearing Officer allowed the denial of displacement to stand.

There appears to be no question that the Claimant sought to displace a junior employee who was the incumbent of the Lead Clerk position. But, the Carrier asserts that he did not possess sufficient fitness and ability to perform the work requirements and to assume the responsibility. Moreover,

the Carrier insists that the evidence adduced at the hearing demonstrates that it did not act in an arbitrary or an unreasonable manner in denying the right to displace.

Of course, the Organization is of a contrary view.

The Organization stresses Rule 6(1) of the agreement between the parties which allows a thirty (30) day period in which to qualify. The Carrier states that Rule 6(1) does not apply unless or until the employee actually obtains a position through displacement. It would certainly appear to us, from the text of Rule 6(1), that it is the very type of rule which is designed to preclude the type of dispute now before us:

"(i) Employees entitled to bulletined positions or taking positions by displacement will be allowed thirty (30) calendar days in which to qualify. If they fail they shall assume the status of furloughed employees except that they may bid on any bulletined position, but may not displace any regularly assigned employee."

It may very well be that said rule will not dispose of all disputes, however the thirty (30) calendar day period referred to therein should not be ignored. Thus, the Board is of the view that the Claimant should have the opportunity to qualify, and we will grant him said opportunity. If he qualifies, we are inclined to award him the difference in compensation which he would have received, effective September 15, 1976, had he been placed in the position.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

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Claim sustained to the extent stated in the Opinion of Board,
above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1980.