

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24961  
Docket Number CL-24359

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
( Cincinnati, New Orleans and Texas Pacific Railway Company  
( (Southern Railway System)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9518)  
that:

Carrier violated the Agreement at Cincinnati, Ohio, when on September 11, 1979, it permitted Mr. A. A. Farria, Jr., a former Clerical employee, to displace Relief Clerk B. A. Miller.

For this violation, the Carrier shall now be required to compensate Relief Clerk B. A. Miller for all monetary losses sustained as a result of that erroneous displacement, beginning on September 11, 1979, and continuing until such time she is permitted to return to her proper position; and compensate her at the rate of time and one-half for all services required of her on the assigned rest days of her proper position, specifically, Thursdays and Fridays, beginning on September 13, 1979, and continuing until she is returned to her proper position of Relief Clerk.

OPINION OF BOARD: A. A. Farria acquired Clerk seniority on June 6, 1977. He worked in a Clerk position until July 28, 1978, at which time he accepted a position as a Special Agent in the Carrier's Department of Police and Special Services. He was released from this position on September 11, 1979. At that time, he acted to exercise his claimed Clerk seniority to displace a less senior Clerk, B. A. Miller, the Claimant herein. Carrier permitted this displacement, crediting Farria with his June 6, 1977 Clerk seniority.

Farria's name was carried on the 1978 Clerk seniority roster, but it was not included on the July 1, 1979 Clerk seniority roster. The Organization infers from the absence of his name in the 1979 list that Farria had lost Clerk seniority upon assuming his Special Agent position. The Carrier, on the other hand, states that the omission of his name from the 1979 roster was simply an error. It was restored to the 1980 and subsequent lists.

The Organization argues, therefore, that Farria improperly displaced Miller. It cites numerous awards supporting the theory that employees may not continue to acquire seniority in different crafts or classes simultaneously, except where such is specifically provided by agreement.

The Board finds, however, that the Carrier acted properly and in conformance with the Agreement, which provides in pertinent part as follows:

"RULE B-3 -- SENIORITY LISTS

. . . .

(b) Names of employees retaining seniority rights under Rule B-5 shall be carried on the roster and an asterisk (\*) shall be placed before such names to properly designate them. The omission of the names of such employees from such rosters shall not, however, operate to affect their seniority in any way . . . ."

"RULE B-5 -- PROMOTION TO OFFICIAL OR  
EXCEPTED POSITIONS

(a) Employees covered by this agreement who have heretofore been promoted to and now occupy official or excepted positions with the carrier, or positions with the Organization, occupying their entire time, and employees who may hereafter be promoted to any such positions either with the carrier or the Organization shall retain all their rights and continue to accumulate seniority in the districts from which promoted. When official or excepted positions are filled by other than employees holding seniority under the respective rules of this agreement, no seniority shall be established by such employment to positions covered by the scope of this agreement.

(b) Employees holding seniority rights under section (a) of this Rule shall, in the event they are demoted, laid off or have occasion to leave their position account of circumstances beyond their election, be privileged to exercise a displacement right under schedule rules, provided they avail themselves of this opportunity within thirty (30) days. If they desire to return to a schedule position because of their own election, they may assert their seniority only by bidding on vacancies, provided that they must exercise such right by bidding upon the first vacancy open, to which their seniority and qualifications entitle them, after so demoting themselves."

The Carrier maintains, without convincing contradiction, that the position of Special Agent has by continuous custom and practice been considered one of the "official and excepted positions" referred to in Rule B-5(a). This rule provides for the right to "continue to accumulate seniority in the districts from which promoted". Rule B-3 provides, as to employees retaining seniority rights, that "omission ... from such rosters [as occurred to Farria in 1979] shall not ... operate to affect their seniority in any way".

The Organization has failed to show that Farria's situation was other than as covered by the above cited rules. Having maintained his employment with the Carrier throughout, Farria's right to displace a less senior employee in a Clerk position is clearly established.

This decision is not intended as a precedent on any other Carrier.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

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ATTEST:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1984.