

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25679
Docket Number MS-25785

George S. Roukis, Referee

(T. R. Williamson

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"(a) Carrier violated the clerical agreement effective July 1, 1979, particularly Rules 5, 19(a), and other rules when, on or about April 16, 1981, J. A. Ellis was permitted to transfer and exercise seniority into District 22, without proper agreement as required by Rule 19(a). Carrier has further violated Rule 18 in allowing J. A. Ellis to displace District 22 clerks from various positions.

(b) District 16 clerk J. A. Ellis bid on Cathode Tube Operator position advertised in Indianapolis, Indiana, District 22 on bulletin #12 dated March 25, 1981. He was awarded the position against the proper agreement between General Chairman Al Archual of BRAC and the company. Before he could actually work the position he was bumped by a District 22 clerk who had to displace. J. A. Ellis was further allowed to stay in District 22 and exercise by bumping according to his District 16 seniority.

(c) Clerk T. R. Williamson shall be allowed eight (8) hours pay beginning April 18, 1981, at the appropriate applicable rate for each week day involved until the violation has been corrected by the compliance with the agreement."

OPINION OF BOARD: The essential facts in this case are as follows: Prior to November 25, 1980, Claimant was the regular incumbent of Position A-99, Seniority District #22 at the Indiana Distribution Center. His seniority date in this district commenced on June 13, 1979. On November 25, 1980, he was displaced from this position by a senior clerk. He could not exercise his seniority within the seniority district and, as such, was placed in a furlough status in accordance with Rule 18(d) of the Controlling Agreement.

Subsequently, Carrier apprised the former General Chairman of the Brotherhood of Railway, Airline and Steamship Clerks (BRAC) on March 11, 1981 that it intended to transfer work from the Payroll Input Terminal Office at Columbus, Ohio to the Payroll Input Terminal Office at Indianapolis, Indiana. This transfer resulted in the abolishment of five (5) clerical positions at Columbus and the establishment of two (2) CRT Operator positions (#s 455 and 456, respectively) at Indianapolis. The two (2) CRT positions were advertised for bid in Seniority Districts 16 and 22, and Position 455 was awarded to Clerk J. A. Ellis, effective April 2, 1981. Clerk Ellis had a District 16 seniority date of April 25, 1970, and as a result of his successful bid, his seniority date was dovetailed into Seniority District 22. Mr. Ellis was later displaced from this position on April 13, 1981 and then exercised seniority within Seniority District 22.

It is Claimant's position that Carrier violated the Clerk's controlling Agreement, particularly Rule 19(a) when Carrier permitted Clerk Ellis to transfer and exercise seniority into District 22 without proper agreement and Rule 18 when Clerk Ellis was allowed to displace on positions in District 22.

Carrier argues that its actions were proper and consistent with Rule 19 since it timely notified the General Chairman of the Rule 19 transfer. It avers that BRAC never contested the transfer of work and position establishment agreement, but instead only returned Carrier's proposal to enlarge upon the provisions of Rule 19(a). It observes that BRAC did not take issue with the final conference determination that Clerk Ellis had his seniority folded into District 22 pursuant to Rule 19(c) and thus, Mr. Ellis properly acquired and exercised seniority in District 22.

In considering this case, the Board concurs with Carrier's position. Clerk Ellis properly bid for Position 455 consistent with Rule 19(c), and seniority was transferred and dovetailed into Seniority District 22. Importantly, under Rule 19(c) there were no impediments that would effectively preclude Clerk Ellis from transferring his seniority from Seniority District 16 to 22, and this interpretative finding is pivotal. Rule 19(c) reads:

"When employees do not elect to follow their positions under paragraphs (a) or (b) above, but exercise seniority in their home seniority district under Rule 18, the vacancies thus created will be advertised in the seniority district from which positions are transferred. Employees assigned positions under the provisions of this paragraph will carry their seniority with them but will not retain seniority in their home seniority district.

"In the event vacancies are not filled in the seniority district from which the positions are transferred, such positions shall be bulletined in the seniority district to which transferred."

The Clerks whose positions were abolished at Columbus, Ohio declined to bid on the two established CRT Operator positions at Indianapolis, and consequently it was not improper to advertise the position simultaneously in Seniority Districts 16 and 22. BRAC did not contest this transfer, although indeed it questioned Carrier's proposal to expand Rule 19(c), but the transfer in itself and under the circumstances of its implementation was not a violation of the Rules cited by Claimant. Upon the record and for the aforesaid reasons, the Board is compelled to deny 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

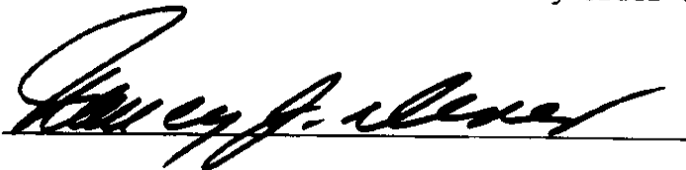
That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1985.