

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27999
Docket No. CL-26649
89-3-85-3-572

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10044) that:

1. Carrier violated the effective Clerks' Agreement when on June 7, 11 and 12, 1984, and subsequent dates thereafter, Carrier failed to call senior furloughed employee J. D. Hairston for short vacancies but rather, called an employee junior in service to Claimant;

2. Carrier shall now compensate Mr. Hairston for eight hours' pay at the straight time rate of Position GT-191 for June 7, 1984; and for each and every day thereafter that Carrier fails to call Claimant in accordance with his seniority. Dates and amounts to be determined by a joint check of Carrier records."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

In early June 1987, a temporary or short term vacancy arose on Position GT-191, Chief Yard Clerk, and on Position GT-192, Assistant Chief Yard Clerk, both at South Chicago, Illinois. Those openings were occasioned by the regular incumbents' temporary unavailability to work those positions at Carrier's facility within the confines of the South Works Steel Mill of U.S. Steel.

At the time the short vacancies arose Claimant, with seniority date of April 29, 1971, and another employee with seniority date of April 25, 1972, both were in furlough status. Carrier recalled the junior employee rather than Claimant to cover these short vacancies and the Organization filed this claim alleging violation of his rights under various Agreement Rules:

"RULE 7

EXERCISE OF SENIORITY

The exercise of seniority in all instances is subject to the provisions of Rules 8 and 16."

"RULE 8

PROMOTION, ASSIGNMENTS AND DISPLACEMENTS

Employees covered by these rules shall be in line for promotion. Promotion, assignments and displacements shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

* * *

NOTE: The word 'sufficient' is intended to more clearly establish the right of a senior employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability. An employee shall be considered as having adequate fitness and ability when he has reasonable fitness and ability to perform the duties of a position under proper supervision and direction, and need not have immediate fitness and ability resulting from actual past experience in performing the work incident to a particular position."

"RULE 11

SHORT VACANCIES

- (a) Vacancies of less than twenty-five (25) calendar days duration shall be considered short vacancies and may be filled without bulletining. When there is reasonable evidence that such vacancies will extend beyond the twenty-five (25) calendar day limit, they shall be promptly bulletined, showing probable or expected duration.

- (b) Employees shall be selected to fill positions pending assignment by bulletin and all short vacancies in accordance with Rules 8 and 19."

"RULE 19

REDUCING AND INCREASING FORCE

* * *

- (g) When forces are increased or vacancies occur, furloughed employees shall be returned to service in the order of their seniority rights. Such employees, when available shall be called in seniority order for all extra work, short vacancies or vacancies occasioned by the filling of positions pending assignment by bulletining which are not filled by employees' voluntary rearrangement of regular forces. When a bulletined new position or vacancy is not filled by an employee in service senior to a furloughed employee who is protected his seniority as provided in this rule, the senior furloughed employee shall be called and assigned to the position...."

There is no question from the record evidence that the junior recalled employee was qualified, on the basis of experience and prior service at South Works, to cover the two positions under Rule 19. The Organization, however, maintains that Claimant also was qualified and therefore should have been given priority in recognition of his seniority. In this state of the record, the burden is upon the Organization to show that he was qualified to perform the principal listed duties of the two (2) positions:

"CHIEF YARD CLERK
POSITION GT-191

Supervision of yard clerical work at South Chicago. Preparation of yard clerical payroll and miscellaneous clerical work as directed.

ASSISTANT CHIEF YARD CLERK
POSITION GT-192

General supervision of yard clerical work and janitor work. Filling of vacancies and maintaining related work records and calling records; checking cars and checking inbound and outbound trains and prepare train checks and miscellaneous yard clerical work as directed."

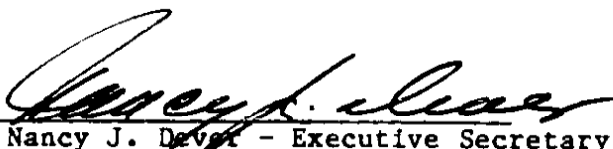
The Organization places primary reliance upon the fact that Claimant was allowed in 1980 to bid, under Rule 16, onto Position GT-1161-R, a regular relief position which relieved, among others, an Assistant Chief Yard Clerk job at South Chicago. Under terms of Rule 16, Time in Which to Qualify, Claimant was allowed up to sixty days to be trained and qualified for that position. After only two (2) days, however, Claimant gave up the position at South Chicago and elected to return to a janitorial position at Gary, Indiana.

In our considered judgment, Claimant has not demonstrated by a preponderance of the evidence that he was qualified in June 1984 to perform the principal duties of the Chief Yard Clerk and Assistant Chief Yard Clerk positions at South Chicago. Accordingly, his claim of Agreement violations in this case must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1989.