

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31791
Docket No. CL-31989
96-3-94-3-367**

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11061) that:

Local time claim in behalf of Mr. Jacob D. Wills, Extra Baggage man, headquarters Union Station, Washington, D.C., that:

(a) The Carrier violated the Rules Agreement effective September 1, 1976, as amended and revised particularly Rule 3-C-1 and others when on April 9, 1992, Claimant Mr. Jacob Wills attempted to displace junior employee Mr. B. M. Campbell from Position I-WTBM-R-2, hours 5:30 a.m. to 1:30 p.m., with relief days of Saturday and Sunday and was told by Foreman J. Curry to report to Union Station at 6:00 a.m., April 10, 1992, (Claimant's fifth day) to make his bump. Because this position actually started at 5:30 a.m. Claimant Mr. Wills would have been too late to make displacement and was forced to bump extra board to protect his seniority.

(b) Claimant is senior, qualified and would have displaced Mr. Campbell, if given proper information from Foreman Curry.

(c) Claimant J. D. Wills now be allowed time and one-half for any day beginning April 10, 1992, that he works any hours different from 5:30 a.m. to 1:30 p.m., time and one-half for any hours worked on Saturday and Sundays and 8 hours straight time for any days, Monday through Friday that Mr. Wills is given a relief day.

(d) Actual amount of money due to be agreed upon at the time Mr. Wills is put on the proper position.

(e) Claim filed in accordance with Rule 7-B-1 of the current agreement and is to continue each and every day until Mr. Wills is put on proper position."

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 employee 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 were given due notice of hearing thereon.

The Claimant was displaced from his position on Monday, April 6, 1992. Under the parties' amended Displacement Rule he had five calendar days to exercise displacement rights to another assignment. The Organization contends that on Thursday, April 9, 1992, the Claimant indicated that he desired to displace Baggageman Campbell from position I-WTBM-R-2, with hours between 5:30 A.M. and 1:30 P.M., Saturday and Sunday as rest days. At that time, the Organization says the Claimant was told to report at 6:00 A.M. on April 10, but this reporting time would have been an illegal bump, because the practice in place requires that employees be notified before the start of their shift that they are being displaced.

The Carrier says that the Claimant did not seek to effect a displacement at all on April 9. Instead, when the Claimant was picking up his paycheck that afternoon, the Carrier states that upon being asked if he wanted to make his bump then and there (as his time to do so was running out) the Claimant responded by stating that he did not know what he would do. According to the Carrier, it was not until the next day that the Claimant, for the first time, called in and asked to bump onto position I-WTBM-R-2. His bump was not allowed because, first, displacements must be made in writing, and second, April 10 was the Claimant's last day of displacement rights, and he was required to displace on a position prior to the starting time of such position.

The documentary evidence in this record does not support the Carrier's position as to the events, and is conflicting with respect to what was said and when it was said. First, with respect to the documentary evidence, in this record is a pre-printed Displacement Notice dated April 9, 1992, signed by the Claimant indicating that he desired to displace onto Position No. 1-WTBM-R-2 effective April 10, 1992. The Displacement Notice indicates that Position No. 1-WTBM-R-2 had a starting time of 5:30 A.M.

On April 24, 1992, the Organization filed the initial claim in this matter. Part (a) of the Statement of Claim, above, was included in the initial claim to the Carrier's General Baggage and Express Supervisor. His May 4, 1992 response supports the allegation made in part (a) that the Claimant was advised to report at 6:00 A.M. (which would have then been an illegal bump). That response reads in part:

"On April 9, 1992, Claimant J. Wills attempted to displace Mr. Bartha Campbell from position 1-WTBM-R-2, 6:00 a to 2:00 p and to report to Union Station at 6:00 a on April 10, 1992 to make his bump.

Please be advised that Mr. J. Wills came to my office at 12:15 p on April 9, 1992 and was instructed to make his bump before the end of Mr. Campbell's shift this date or to be here before the start of his shift the following day April 10, 1992. Specific instructions were given to Mr. Wills to make sure he made his displacement on a timely basis in order for him to protect his seniority. His reply was 'I'll think about it.'"

Fourteen months later, though, the displacement attempt of April 9, 1992 is being overlooked. In Carrier's Director Labor Relations denial dated July 15, 1993, the situation occurring on April 9 and 10, 1992 is described as follows:

"With respect to the facts involved, there is no dispute that Mr. Wills' was bumped from his baggage position on Monday, April 6, 1992. There is also no dispute to the fact that Mr. Wills had five (5) calendar days or until April 10, 1992 to make his displacement to another position or revert to his guaranteed extra board. The claimant came to Union Station around 3:30 p.m. on Thursday, April 9, 1992 for the purpose of picking up his pay check. Baggage Supervisor V. Roth advise that when he gave the Claimant his check he (Roth) advised Mr. Wills that his displacement right were almost gone and asked him if he wanted to make a bump at that time.

According to Supervisor Roth, the claimant replied 'I don't know what I'm going to do' and departed the station. On Friday, April 10, 1992 at approximately 10:00 a.m. the Claimant called the baggage office in an attempt to make his displacement over the telephone. The position he attempted to displace on was held by junior employee B. Campbell whose tour of duty began at 5:30 a.m. on April 10, 1992. The Claimant's displacement attempt was properly declined by Foreman Curry for two (2) reasons:

1. Displacements must be in writing and are not taken on the telephone;

and

2. Since April 10 was the Claimant's last day of displacement rights, he was required to displace on a position prior to the starting time of such position."

As can be seen from review of the above, there are critical differences between what was written in the initial response to the claim of the Organization and the Carrier's final (on the property) response. But, there is more. Several of the Carrier's writings in the intermediate processing contain additional factual errors as to events as well as to timing. And all will agree that timing is a crucial and critical element in a correct resolution of this matter. To this end, the Organization's writings on timing have been relatively consistent. For example, on January 11, 1993 the Chairman of the Division Protective Committee wrote:

"Mr. Wills was bumped by Mr. Pritchard on Monday April 6, 1992. Now on Thursday April 9, 1992 Mr. Wills informed Foreman Curry that he was going to displace Mr. B. M. Campbell from position 1-WTBM-R-2 wit hours of 5:30 a.m. to 1:30 p.m. with rest days of Saturday and Sunday.

At this point Foreman Curry told Mr. Wills to report to Union Station on April 10, 1992 at 6:00 a.m. (Will's 5th day.) Because this position actually started at 5:30 am. Wills would be too late to make displacement and thus was forced to bump onto the extra board to protect his seniority."

When this consistency is considered along with a copy of a Displacement Notice dated April 9, 1992, correctly identifying, the job, that the Claimant desired, with the correct starting times, the Board credits the evidence and argument of the Organization over that of the Carrier. The complete record forces a single conclusion; the Claimant was improperly denied displacement onto Position 1-WTBM-2. His claim has merit.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 26th day of December 1996.