

PUBLIC LAW BOARD NO. 2011

AWARD NO. 19

CASE NO. 21

PARTIES TO THE DISPUTE:

Brotherhood of Railway, Airline and Steamship
Clerks, Freight Handlers, Express and Station
Employees

and

Chicago and Illinois Midland Railway Company

NATIONAL MEDIATION
BOARD
JUN 5 8 59 AM '81
NATIONAL RAILROAD
ADJUSTMENT BOARD

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. Carrier violated the Agreement between the parties, in particular Supplement No. 1, dated January 15, 1953, when it failed to fill the position of Chief Clerk and Cashier, Powerton, Illinois, while under bulletin, with senior furloughed Clerk J. A. Rescho.
2. Carrier shall now be required to compensate Clerk J. A. Rescho eight (8) hours pay at straight time rate, \$59.3713 per day, each day, February 6, 7, 8, 9, and 10, 1978, account being denied the right to work the position aforementioned.

OPINION OF BOARD:

At issue herein is the Organization's allegation that Carrier violated the express terms of a Letter of Understanding which was carried forward as Supplement No. 1 of the current Agreement. Carrier maintains that Supplement No. 1 does not govern the case and alternatively that Rules 10, 19 and 20 supercede and control the application of Supplement No. 1. Proper disposition of the case requires the reading together and reconciliation of these Agreement provisions.

By Bulletin of December 2, 1977 the position of Chief Clerk and Cashier, Powerton Station, was abolished effective December 9, 1977. Mr. G. L. Morris, the regularly assigned incumbent of that position, exercised his displacement

rights, and finally displaced D. J. Condey on the position of No. 8 Yard Station Clerk-Shops on January 23, 1978. Less than ninety days after the position was abolished, Chief Clerk and Cashier, Powerton Station, was reestablished by Bulletin of February 3, 1980⁷⁸, with the bulletin period expiring on February 10, 1980⁷⁸.

Claimant was at all times pertinent a furloughed employee qualified to work the Chief Clerk's job, with seniority date of November 22, 1976. At or about the time the reestablishment bulletin was issued, she received a telephone notification from the Assistant to the Superintendent to cover the Chief Clerk position during the bulletin period. On November 4, 1980⁷⁸, G. L. Morris notified Superintendent Alstott as follows:

Dear Sir:

Please accept this as my bid on Job Bulletin No. C-7-78 for the Position of Chief Clerk & Cashier, Powerton Station and as being the last regular assigned incumbent, I wish to place myself effective 7:30 AM Monday, Feb 6, 1978 per Rule number 20 of Clerk's Agreement.

Cordon L. Morris
#8 Yard-Sta. Clerk
Shops, Ill.

Upon receipt of that application, the Assistant to the Superintendent again telephoned Claimant and retracted his earlier instructions to cover the position; and Mr. Morris rather than Ms. Rescho was used to cover the position during the bulletin period. Bids were closed on February 10, 1980⁷⁸ and Mr. Morris was awarded the reestablished permanent position. Ms. Rescho filed the instant claim asserting violation of her rights under Supplement No. 1.

Review of the pertinent Agreement language convinces us that the claim should be sustained. Under Rule 20-Reinstated Positions, the right of the "last regular assigned incumbent" to be "returned to the position without regard

to seniority" does not vest until the end of the bulletin period because it is not until that time that Carrier can determine if "a senior unassigned employe bids on the position". Thus, Rule 20 per se granted Mr. Morris no priority entitlement over anyone else to placement on the position during the bulletin period.

Rule 10, unlike Rule 20, does speak generally to the filling of bulletined positions temporarily pending assignment, but the specific language of Supplement No. 1 prevails in the facts of this case. Thus, Claimant's right to fill the Chief Clerk and Cashier position pending permanent assignment flows clearly from the express language of Supplement No. 1, as follows:

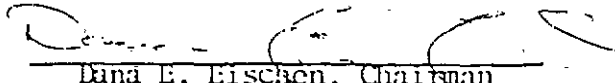
It was understood that when qualified furloughed employes are available on the roster involved, the carrier was agreeable to filling established bulletined positions temporarily pending an assignment. In offering such work to the senior qualified available employes it was not, however, contemplated that regular assigned employes would be up-graded to fill such vacancies during the bulletin period, in order to permit furloughed employes to return to work on other positions not under bulletin.


It was further understood that the carrier would not be penalized in the event the qualified furloughed employes were not available to protect the vacancies herein referred to.


Carrier allegations that Claimant was not "the senior qualified available" furloughed employe for purposes of Supplement No. 1 were raised for the first time in oral argument before this Board and cannot be considered.

AWARD

Claim sustained.


Dana E. Eischen, Chairman


R. O. Norton, Employee Member


A. E. Brockschmidt, Carrier Member

Date: 5/22/01