

COPY

SPECIAL BOARD OF ADJUSTMENT NO. 192

PARTIES:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
and
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 15

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) Carrier violated the rules of the Clerks' Agreement when on Monday, November 15, 1954, it permitted Group 3 employees without Group 1 seniority to work on Group 1 positions, and

(2) That Carrier now compensate Elias Laskin, Albert Lowery and Anthony Aquino, each of whom carried Group 1 seniority, for one day's pay each at the punitive rate account not being permitted to work on Monday, November 15, 1954.

FINDINGS:

Claimants, regularly assigned Joint Tallymen and Receiving Clerks, were in rest day status when the Carrier used three extra employees with only Group 3 seniority to work as Group 1 Joint Tallymen and Receiving Clerks.

Carrier contends that its action was permissible under Rule 27(b) which provides for the transfer and promotion of employees from one group to another by agreement and further provides that in the event no agreement is reached between the Management and the General Chairman or their duly authorized representatives, as provided, employees who may be transferred or promoted from one group to another will not acquire any seniority in the group to which transferred or promoted. Carrier also cites Rule 4(b-2), which provides that where work is required to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee.

It is not disputed that the claimants had had 40 hours of work in the week involved, whereas the extra employees used had not as yet worked 40 hours. It is further clear that there were no extra employees holding Group 1 seniority available on the day in question.

We think it is clear that under Rule 4(b-2) the available extra or unassigned employee referred to is one whose seniority entitles him to perform the work to be done. It is clear, therefore, that the issue in this docket is simply whether or not under Rule 27(b) the Carrier had the right to assign the work as it did. Rule 27(b) reads as follows:

"(b) Employees in the various groups, (as established in Rule 1) are only entitled to and shall retain seniority in their respective groups. Such employees may, however, be transferred or promoted from one group to another, by agreement between the Management and the General Chairman or their authorized representatives, and in the event of such transfer or promotion they will retain and continue to accumulate seniority in group from which transferred or promoted, and will also establish seniority in the group to which transferred or promoted from the agreed upon date of such transfer or promotion. Such employees may exercise seniority rights in any group in which they hold or shall establish seniority rights under this paragraph, without forfeiting seniority rights they hold in any other group. In the event no agreement is reached between the Management and the General Chairman or their authorized representatives as herein provided employees who may be transferred or promoted from one group to another will not acquire any seniority in the group to which transferred or promoted."

Under the circumstances of this case there does not appear to have been a transfer or promotion of the Group 3 employees as contemplated by the above rule. They were merely used on a given day to perform a given task. The first part of the rule with its emphasis upon entitlement to and retention of seniority in the respective groups would be completely nullified if the Carrier could move extra employees into and out of groups in which they held no seniority and permit them to perform work of that group while employees holding seniority in the group were available. The "transfer" or "promotion" referred to in the rule clearly contemplates assignment of the employee involved to work in another group on a reasonably continuing basis. That was not the case here. It follows that a sustaining Award is indicated. The proper payment, however, under well-reasoned decisions of the Third Division, National Railroad Adjustment Board, is at the pro rata and not the punitive rate.

AWARD

Claim (1) sustained. Claim (2) sustained at the pro rata rate.

/s/ Francis J. Robertson
Chairman

/s/ E. J. Hoffman
Employee Member

/s/ T. S. Woods
Carrier Member,
Dissenting

Dated at Baltimore, Maryland this
26th day of August, 1959.