

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 239
(Clerks' Board, St. Louis, Missouri)

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS,
EXPRESS AND STATION EMPLOYEES

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. Carrier violated the Clerks' Agreement when it failed to use Clerk E. L. Kees, the regularly assigned employee of the 3:00 PM to 11:00 PM Yard Clerk position at Alexandria, La., on Friday and Saturday, June 13 and 14, 1958, in violation of the provisions of Rules 3, 14 and other related rules of the Clerks' Agreement;
2. The Carrier shall be required to pay Clerk E. L. Kees for wage loss sustained for eight hours each date, June 13 and 14, 1958, at the Yard Clerk pro rata rate of \$17.36 per day, amount \$34.72, account of the Carrier's action in violation of the Clerks' Agreement.

OPINION OF BOARD:

This dispute involves the application of the Agreement between the Carrier and its Employees, regarding the proper person who should have been used on a regular assignment when the one who exercised seniority on the position failed to actually assume the duties of the position due to illness; the Employees contending that the Agreement, by both its terms and its intent, contemplates and provides that one is not actually displaced from a position until the new incumbent actually assumes the work on that position.

Carrier's position, in brief, is that the claimant's rights to the position ceased upon notice of his displacement.

The record shows that due to force reduction, Clerk A. L. Mathews exercised his displacement rights to the position of Yard Clerk held by claimant and notified the proper Carrier officer that he would assume the duties of the position on Friday, June 13, 1958. The claimant, upon being given proper notice of his displacement, did not immediately exercise his displacement rights to some other position but made request to start his vacation June 16, 1958 which request was granted.

Within thirty minutes of the appointed starting time when Clerk Mathews was to assume the duties of his new position on the stipulated date, he notified the Carrier officer that, due to illness, he could not protect on the position that day. He was off duty that day and the next and reported for duty on Sunday, June 15, 1958. The position was worked by an extra Clerk on June 13 and 14.

The claims are for eight hours pay for each assigned date the position was worked by the extra Clerk on the theory that the position of Yard Clerk still belonged to the claimant because he had not been actually displaced from it.

The dispute puts in issue the purpose, intent and meaning of Rule 14(e) of the Agreement which provides as follows:

"Employees actually displaced account position abolished or through the exercise of seniority by senior employees, must exercise their seniority rights (subject to the fitness and ability provisions of Rules 4 and 7) over junior employees by assuming the duties and hours of assignment of the position sought, or by designation of record, copy to the Division Chairman. Employees who fail to assert these rights within ten days after actual displacement will be placed on the furloughed list, retaining their seniority and subject to call, as provided for in this Rule 14, after being placed on the furloughed list.

"Such employees actually displaced under the provisions of this rule, who do not possess sufficient seniority to displace other employees will be considered as furloughed and subject to the provisions of Section (h) of this rule requiring filing of name and address and will be subject to call and required to return to service in the order of their seniority rights for temporary or permanent employment as prescribed by Section (i) of this rule.

"Employees exercising seniority under this section may be granted leave of absence, but prior thereto must indicate in writing, copy to the Division Chairman, position of their choice, although they need not assume the duties of the position until return from their leave, in which event displacement is not effective until work is actually assumed on the position."

In the initial handling of the claim Carrier acknowledged that claimant would have been called to fill the temporary vacancy had it been known at the time he wanted to work these two days prior to his vacation. It stands admitted that no attempt was made to call claimant or to ascertain whether he desired to work the two days in question.

Carrier also defends its failure to call claimant on the grounds that he likely would not have been available on such short notice, but this proves irrelevant in view of Carrier's later admission that the employee on the previous shift could have been held on duty until claimant arrived to take over the work.

Additionally, Carrier assumes a state of facts not in evidence by arguing that claimant would have been severed from the job had he attempted to place himself as he could have done under the Rules. At the time in question claimant had not exercised his displacement rights and the Rule gives him ten days after actual displacement within which to do so. Until the displaced employee places himself within the meaning of the Rule on another position or is furloughed, the presumption that he has severed all claim to his former position is not valid, as we read the Rule, provided, of course, the new incumbent has not actually placed himself on the position.

In the instant case claimant stood to protect on his former position under the facts and circumstances present in this docket, and the claim is valid.

FINDINGS:

The Board, after oral hearing, and upon the record and all the evidence, finds and holds:

That the Carrier and Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as amended;

That jurisdiction over the dispute involved herein has been conferred upon this Board by special agreement; and,

That the Agreement by and between the parties to this dispute has been violated.

AWARD

Claim sustained by order of:

Special Board of Adjustment No. 239

/s/ A. Langley Coffey
A. Langley Coffey, Chairman

/s/ F. A. Griesse
F. A. Griesse, Employer Member

/s/ Ira F. Thomas
Ira F. Thomas, Employe Member

Dated at St. Louis, Missouri,
this 30th day of June, 1959.