

Award No. 38
Docket No. CL-9080

SPECIAL BOARD OF ADJUSTMENT NO. 170

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
versus
ILLINOIS CENTRAL RAILROAD COMPANY

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

(a) Carrier violated the Clerks' Agreement at the Freight Station, Baton Rouge, Louisiana, when on May 2, 3, 4, 5, 6, and 9, 1955, it failed and refused to assign Clerks C. J. Bell, W. D. Blum and E. A. Kling to Position No. 103, temporarily vacant due to the regular occupant thereof being granted leave of absence.

(b) C. J. Bell be compensated for wage losses sustained representing a day's pay at punitive rate on May 2, 3 and 9, 1955 (pro rata rate of position \$15.10 per day).

(c) W. D. Blum be compensated for wage losses sustained representing a day's pay at punitive rate on May 4 and 5, 1955 (pro rata rate of position \$15.10 per day).

(d) E. A. Kling be compensated for wage losses sustained representing a day's pay at punitive rate on May 6, 1955 (pro rata rate of position \$15.10 per day).

OPINION: There are employed at the Freight Station, Baton Rouge, Louisiana, a force of employes who perform the clerical and freight handling duties in connection with the operation of the agency.

I. E. Heil, the regular incumbent of Position No. 103, was granted a leave of absence, and the vacancy on the position was bulletined on May 2, 1955. Mrs. R. M. Martin, an unassigned or extra clerk was called to work the vacancy for the period it was bulletined, but as she was not qualified to perform the work attaching to the position, L. A. McLin was required to vacate Position No. 113 and perform the work on 103. Mrs. Martin was then assigned to Position No. 113 which had been vacated by L. A. McLin.

W. I. Peak bid for and was assigned to the vacancy on Position 103, thereby forcing L. A. McLin back to his regular assignment on Position 113 which in turn forced Martin to the unassigned or extra list. It appears that the Employes objected to Carrier's transfer of L. A. McLin from his regular assignment to perform work on the temporarily vacant position.

It is the position of the Employes that the Carrier violated the agreement when it permitted or required L. A. McLin to vacate his regular assigned position and assigned him to a position temporarily vacant.

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It is the position of the Carrier that there is no rule of the Agreement that restricts the Carrier from allowing employes with regular assignments to be promoted to fill short vacancies in the absence of qualified extra employes. Moreover L. A. McLin volunteered to accept a promotion to fill a short vacancy in accordance with a long established practice. It appears that none of the employes involved in the instant dispute were required to suspend work or absorb overtime during their regular hours of employment.

It has been held that the voluntary action on the part of an employe to accept the so-called step up position has not the force of setting aside the rule, see Award 9, Special Board of Adjustment No. 170.

In the case at bar, L. A. McLin had inferior seniority rights to Claimants. The Carrier violated the agreement in failing to call Claimants to fill the temporary vacancy, see Award No. 31, Special Board of Adjustment No. 170.

FINDINGS: The Special Board of Adjustment No. 170 after giving to the parties to this dispute due notice of hearing thereon, and upon the whole 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;

That the Special Board of Adjustment No. 170 has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD: Claims sustained at pro rata pay.

SPECIAL BOARD OF ADJUSTMENT NO. 170

/s/ Edw. M. Sharpe
Edward M. Sharpe -- Chairman

A. B. Simmons
A. B. Simmons -- Employe Member

/s/ E. H. Hallmann
E. H. Hallmann -- Carrier Member

Chicago, Illinois
January 28, 1958