

SPECIAL BOARD OF ADJUSTMENT NO. 170

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

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

(a) Carrier violated the Clerks' Agreement when on Saturday, April 5, 1952, and continuing thereafter on the Saturdays of each week until June 7, 1952, it utilized the services of one F. D. Privett, a full time employe of the E. I. DuPont Company at Woodstock, Tennessee, to relieve H. S. Newnam, Jr., Yard Clerk Position 504 at Dyersburg, Tennessee, on one of his designated rest days, namely Saturday of each week, on April 5, 12, 19, 26, May 3, 10, 17, 24, 31 and June 7, 1952.

(b) That H. S. Newnam, Jr., the regular assigned incumbent of Position 504, be compensated for wage loss sustained for Saturdays, May 17, 24, 31 and June 7, 1952, representing eight hours' pay at punitive rate (pro rata rate of position, \$13.33 per day) for each date named.

OPINION: In April 1952, H. S. Newnam was the regularly employed yard clerk at Dyersburg, Tennessee. The position was designated by the Carrier as one requiring a six-day week, namely Monday to Saturday, inclusive. Newnam's designated rest days were Saturday and Sunday.

On Saturday, April 5, 1952, Carrier engaged the services of F. D. Privett. Privett also worked other Saturdays and was eventually given a full-time job.

It is the position of the Employees that Privett was hired solely for the purpose of performing the Saturday work, and not being a furloughed employe, was not entitled to perform less than five days of work per week and acquire seniority on an employe status, and that Privett never intended to become a bona fide employe of the Carrier as it was known to the Carrier and the Organization that he had a regular job working Monday through Friday for DuPont at Woodstock, Tennessee.

It is the position of the Carrier that it has the right to hire new employes to perform extra clerical work, including temporary positions of less than 30 days occasioned by increase in work, short vacancies of less than 30 days occasioned by the absence of regularly assigned employes and vacancies on the rest days of regular positions not a part of a regular relief assignment, and that the practice of hiring extra clerks has existed on this property prior to 1922.

It is an established rule that seniority of new employes begins at the time the employe's pay starts. In Award No. 6261 it was said:

"The System Board of Adjustment contends that Carrier thus filled these rest days with outsiders and doing so is in violation of their Agreement. Primarily involved is the manner in which relief was provided to fill the rest days of these positions. The question is, can Carrier

establish regular relief assignments of less than five days and, if no bids are received, hire new employes and assign them thereto? We fully discussed and decided this issue in Award 6260, based on Docket CL-6200, which involved the identical question based on the same Agreement and between the same parties. Therein we held the Carrier could do so but that the person hired must actually become a bona fide employe. That Award is controlling here.

"The Organization suggests that a person who has regular outside employment cannot qualify as a bona fide employe of a carrier. The term employe, as used in the Railway Labor Act, includes every person in the service of a carrier who performs any work defined by proper authority as that of an employe and who is subject to carrier's continuing authority to supervise and direct the manner of rendition of his services while performing it. They must accept the service with the intent, desire and expectation of becoming bona fide employes. It does not preclude them from having outside employment but they must, at all times, be subject to call and assignment with readiness to serve.

* * * *

"Francis presents a more difficult problem. It appears he was and still is a bartender in a tavern in Stevens Point. It would appear that he has faithfully fulfilled all the duties of the relief position and there is nothing to show he has ever failed to respond when called upon. The only thing is his regular outside employment but we do not think this necessarily precludes him from becoming a bona fide employe. We find, when Carrier hired Francis and assigned him to the relief position, he actually had the intent, desire and expectation of becoming a bona fide employe of Carrier and that, in fact, he became such."

Awards establishing a principle should be adhered to in succeeding awards unless there is some cogent reason from departing therefrom.

We are of the opinion that Privett's work with DuPont Co. does not prevent him from becoming a bona fide employe of the Carrier, and the fact that he is now a full-time employe of the Carrier lends support to the claim that he became an employe of the Carrier in good faith.

FINDINGS: The Special Adjustment Board 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 Adjustment Board No. 170 has jurisdiction over the dispute

Award No. 4
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involved herein; and

That Carrier has not violated the Agreement.

AWARD: Claim denied.

SPECIAL BOARD OF ADJUSTMENT NO. 170

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

A. B. Simmons, -- Employee Member

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

Chicago, Illinois
February 26, 1957