

Award No. 1260

Docket No. 1191

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

The Fourth Division consisted of the regular members and in addition Referee Dwyer W. Shugrue when award was rendered.

PARTIES TO DISPUTE:

RAILWAY PATROLMEN'S INTERNATIONAL UNION, AFL-CIO

THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)

STATEMENT OF CLAIM: Claim and request of the Railway Patrolmen's International Union that:

(a) On November 1, 1956, Patrolmen J. P. O'Connor, D. J. Lumkes and J. J. Bukovich were furloughed and an employe junior in service retained in Carrier's employ.

(b) That the senior employes be returned to service with seniority unimpaired and pay for all time lost.

EMPLOYES' DESCRIPTION OF DISPUTE: The above named employes were furloughed in disregard of the provisions of the current agreement and a junior employe retained in service.

EMPLOYES' STATEMENT OF FACTS: There exists an agreement between New York Central Railroad Company and Railway Patrolmen's International Union A. F. of L. - C. I. O. This agreement was signed in New York City, New York on April 19, 1949 and effective September 1, 1949.

For the sake of brevity, the New York Central Railroad Company will be referred to as "N. Y. C." The Railway Patrolmen's International Union A. F. of L. - C. I. O. will be referred to as "Union" and the agreement between "N. Y. C." and "Union" effective September 1, 1949 will be referred to as "agreement".

The N. Y. C. for the Chicago territory does and has maintained a seniority roster. The following is a section of that roster:

J. P. O'Connor	9-11-43
Donald J. Lumkes	10-8-47
J. Bukovich	7-26-51
J. J. Hughes	1-24-53

On October 30, 1956, Officers J. P. O'Connor, Donald Lumkes, and J. Bukovich were notified by Captain E. A. Vogler of N. Y. C. that due to a reduction in force they were being furloughed.

(Exhibit #1.)

NEW YORK CENTRAL SYSTEM

Chicago, October 30th, 1956

File: 3.00

Appln.

Mr. Donald J. Lumkes
9924 S. Wallace St.
Chicago, Illinois

Dear Sir:

I regret to advise that effective November 1, 1956, you will be furloughed due to reduction in force.

Please keep me advised of any change of address as your name will be continued to be carried on the seniority roster for a period of three years for a call to return to service.

Yours very truly,

/s/ E. A. Vogler
Captain of Police

cc: Mr. Joseph T. Gill

On October 30, 1956, Officers J. P. O'Connor, Donald Lumkes, and J. Bukovich notified their local chairman of this action and desired to protest this action.

(Example of notification in Exhibit #2.)

October 30, 1956

Dear Brother Gill:

Attached please find letter signed by Captain E. A. Vogler, advising of reduction in force and effective November 1, 1956, I will be furloughed.

Wish to make a protest in this connection in that junior patrolman John Hughes, working on desk relief has not been furloughed.

Fraternally yours,

/s/ Donald J. Lumkes
9924 So. Wallace St.
Chicago, Ill.

Mr. Gill, local chairman, notified Captain A. E. Vogler of protest and claim of the three officers and the position of the "Union".

(Exhibit #3.)

RAILWAY PATROLMEN'S
INTERNATIONAL UNION

November 5, 1956

Mr. E. A. Vogler, Captain of Police,
New York Central System,
Room 303, LaSalle Street Station,
Chicago 3, Illinois.

Dear Sir:

Kindly refer to your letter dated October 30, 1956, your file 3.00 appln. addressed Patrolmen J. P. O'Connor, Donald J. Lumkes and J. Bukovich, advising them, that effective November 1, 1956, that they would be furloughed due to reduction in forces.

The above named patrolmen as you well know, have seniority from two to eight years over Patrolman J. J. Hughes, who we understand has been retained on the payroll.

May we call your attention to Rule 7 (j) and 8 (a) of our extant agreement, we are sure you can readily see that the removing of the above mentioned Patrolmen from the payroll, while retaining Patrolman Hughes, is a direct violation of these rules.

Will you therefore accept this letter as a formal protest and claim for any loss salary suffered by the above mentioned patrolmen who has been furloughed arbitrarily and not in accordance with the rules of the agreement. Will you therefore accept this letter in accordance with the procedure of the Railway Labor Act as amended.

Your advise as to your position and acknowledgement will be appreciated.

Yours truly,

/s/ Joseph T. Gill
Local Chairman

cc: M. Berney
J. E. Murphy.

On November 13, 1956, Captain A. E. Vogler answered the local chairman's protest and claim.

(Exhibit #4.)

NEW YORK CENTRAL SYSTEM

Chicago, November 13th,
1956

Mr. Joseph T. Gill
Local Chairman
Railway Patrolmen's International
Union, Local No. 2
1302 W. 52nd Street
Chicago 9, Illinois

File: 3.03

Dear Sir:

Referring to your letter of November 5th, 1956, same having reference to Railway Patrolmen's International Union protesting the furloughing of Patrolmen J. P. O'Connor, D. J. Lumkes and J. J. Bukovich, effective November 1st, account of reduction in force, claiming Patrolman J. J. Hughes, who holds an excepted position in this office, is a junior member of the Department and should have been furloughed before Patrolmen O'Connor, Lumkes and Bukovich were furloughed:—

Patrolman J. J. Hughes holds an excepted position and cannot be displaced.

Your claim for loss of any salary suffered by the above mentioned patrolmen is hereby denied.

Yours very truly,

/s/ E. A. Vogler
Captain of Police

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On November 14, 1956, the local chairman notified the General Chairman of the answer to the protest and claim.

(Exhibit #5.)

RAILWAY PATROLMEN'S
INTERNATIONAL UNION

Local No. 2

Mr. J. E. Murphy,
General Chairman, Railway
Patrolmen's International Union
488 Winneconna Parkway,
Chicago 20, Illinois.

November 14th, 1956.

Dear Sir and Brother:

Referring to my letter of November 5th, 1956 to Captain E. A. Vogler copy of same mailed to you, protesting the furloughing of

Patrolmen J. P. O'Connor, D. Lumkes, and J. J. Bukovich, effective November 1, account of reduction in force, while a junior Patrolman J. J. Hughes who is on an excepted position is retained.

Today I received a letter from Captain E. A. Vogler referring to my letter of November 5, and I quote from same:

Patrolman J. J. Hughes holds an excepted position and cannot be displaced.

Your claim for loss of any salary suffered by the above mentioned Patrolmen is hereby denied.

Yours very truly,

E. A. Vogler
Captain of Police

Mr. J. E. Murphy I am sending you the complete file on this case and request that you progress same to a satisfactory decision on behalf of the mentioned patrolmen, and the men I represent, and if you have to, have the case go to the Board.

Fraternally yours,

/s/ Joseph T. Gill
Local Chairman

cc: Merle Barney
J. P. O'Connor
D. J. Lumkes
J. Bukovich

On November 19, 1956, the General Chairman notified the Chief of Police Western Division N. Y. C. of the Union position on claim.

(Exhibit #6.)

RAILWAY PATROLMEN'S
INTERNATIONAL UNION

November 19, 1956

Mr. J. T. Husum, Chief of Police,
New York Central System,
Room 303, LaSalle St. Station,
Chicago 5, Illinois.

Dear Sir:

Will you kindly refer to Captain E. A. Vogler's letter of November 13, 1956, his file 3.03, addressed to Local Chairman, Joseph T. Gill, in answer to Chairman Gill's letter of November 5, 1956, relative to the furloughing of Patrolmen J. P. O'Connor, Donald Lumkes and J. Bukovich, while junior Patrolman J. J. Hughes, was retained on the payroll.

In the second paragraph of Captain Vogler's letter, he states as follows, "Patrolman J. J. Hughes holds an excepted position and cannot be displaced." The above is contrary to all of the seniority rules of the extant agreement, between the New York Central System and the Railway Patrolmen's International Union.

We feel that after you have reviewed our protest and claim, as stated in Chairman Gill's letter of November 5, 1956, you will reverse the decision as rendered in Captain Vogler's letter of November 13, 1956, and return the senior Patrolman to his assignment.

Will you kindly advise us your position in this matter.

Respectfully yours,

J. E. Murphy,
General Chairman.

cc: Capt. E. A. Vogler
M. Barney
J. Gill.

On November 27, 1956, Chief of Police Western Division notified the General Chairman that he concurred in his subordinates action.

(Exhibit #7.)

NEW YORK CENTRAL SYSTEM

November 27th, 1956
File: N 3.03

Mr. J. E. Murphy, General Chairman
Railway Patrolmen's International Union
488 Winneconna Parkway
Chicago 20, Illinois

Dear Sir:

Referring to your letter of November 19th, appealing the decision of Captain E. A. Vogler in the case of furloughing of New York Central Patrolmen J. P. O'Connor, D. J. Lumkes and J. J. Bukovich, while Patrolman J. J. Hughes, a junior member of the Department, was retained in service:—

I believe that you are aware of all of the facts in this case being that Patrolman J. J. Hughes is working on an excepted position as Desk Officer in my office and that an Officer holding a position of this kind cannot be displaced by any other Patrolman.

I concur in Captain Vogler's decision in this matter.

Yours very truly,

/s/ J. T. Husum
Chief Of Police

cc: Mr. D. W. Taylor

On December 1, 1956, the System General Chairman of the Union notified the Superintendent of Police N.Y.C. of the Union's position.

(Exhibit #8.)

Indianapolis, Indiana.
December 4, 1956.

Re: Patrolmen J. P. O'Connor, D.
Lumkes, and J. J. Bukovich,
Furloughed, Chicago, District.
12-1-56.

Mr. D. W. Taylor,
Superintendent of Police,
New York Central Railroad Company,
466 Lexington Avenue,
New York 17, New York.

Dear Mr. Taylor:

Please be advised that the Union, is "APPEALING", the decision rendered by Chief of Police, J. T. Husum, Chicago, Illinois, as set forth in his letter of November 27th, 1956, "File: N 3.03", to General Chairman J. E. Murphy in denying the claim of Patrolmen J. P. O'Connor, D. Lumkes and J. J. Bukovich, furloughed effective December 1, 1956, and Patrolman J. J. Hughes, a junior officer in seniority retained in service, which is a violation of the current Agreement:

We definitely have a violation by Carrier of the current Agreement, Rules 7 (g) and (j), along with Rule 8 (a).

These above mentioned officers were denied their seniority rights to displace a junior officer, which is a violation of the above mentioned Rules herein stated. Those Rules have no ambiguous wording and are surely plain. Furthermore, Patrolman J. J. Hughes, is covered by the current Agreement, and subject to same in any reduction in force, where officers are furloughed. Rule 7 (f), take the words "and if displaced may exercise seniority under Rule 10", that is surely plain that they are subject to displacement by senior officers when furloughed, is it not?

Rule 8 (a), in part "otherwise subject to these rules", meaning the Rules of the current Agreement, no others, is that not true? Take Rule 7 (j), in part I quote, "Seniority rights of employes covered by these rules may be exercised only in case of vacancies, new position, reduction of force." It is certainly true there was a reduction of force, however, Carrier, refused to allow the aforementioned furloughed officers to exercise their seniority rights under the current Agreement. The facts set this out plainly, their seniority is being taken away from them in violation of the current Agreement, covering same.

Therefore, I request that any officer mentioned in the first paragraph of this letter, or all of them, be allowed to exercise their senior-

ity rights as stipulated under the current Agreement, and be paid for each and every day they are not permitted nor allowed to exercise their seniority rights under the current agreement, at their daily rate of pay.

In the closing of my letter I want to mention the mere fact that the current Agreement, has no rule nor does it stipulate any place in it that any officer on an excepted or appointive position has super seniority, and this is what Captain Volger and Chief Husum, have endeavored to read in the Rules of the current Agreement, that are not in there, in reply to both Local Chairman Gill and General Chairman Murphy, this I trust that you can readily see without any trouble. Now let us just be fair in our dealings with the current Agreement, on its Rules as set forth therein.

Will you kindly advise by return letter your action in this matter herein mentioned.

Yours very truly,

/s/ Merle Barney
System General Chairman
Railway Patrolmen's International
Union, New York Central System.

On December 7, 1956, a meeting was held in Mr. Taylor's office with Union Representatives, but since Mr. Taylor did not have all records and was not prepared, this meeting was postponed.

The meeting was then scheduled for January 9, 1957 in the office of Superintendent of Police N. Y. C.

(Exhibit #9.)

NEW YORK CENTRAL SYSTEM

December 19, 1956 tw
File: 56-27

Mr. Merle Barney
System General Chairman
515 East 31st Street
Indianapolis, Ind.

Dear Mr. Barney:

Your letter of the 16th, file "Re: Patrolmen J. O'Connor, D. Lumkes, and J. J. Bukovich, Furloughed, Chicago District, 12-1-56".

I will be glad to go into this matter with you at 9:00 A. M., January 9th, 1957, and I hope we can come to an amicable decision at that time.

Very truly yours,

/s/ D. W. Taylor

Meeting on the grievance and claim was held on January 9, 1957 and a letter was received on January 14, 1957 by System General Chairman "Union" from Superintendent of Police N. Y. C.

(Exhibit #10.)

NEW YORK CENTRAL SYSTEM

January 11, 1957 tw
File: 56-27

Mr. Merle Barney,
System General Chairman
515 East 31st Street
Indianapolis, Ind.

Dear Mr. Barney:

Reference your file "Re: Patrolmen J. P. O'Connor, D. Lumkes and J. J. Bukovich, Furloughed, Chicago District. 12-1-56", and our conversation in connection with this matter on the 9th.

I explained my position at our conference, and am now advising that your claim is denied.

Very truly yours,

/s/ D. W. Taylor

On January 15, 1957, the Superintendent of Police N. Y. C. was notified that his decision was being appealed.

(Exhibit #11.)

Indianapolis, Indiana
January 16, 1957

Re: Patrolmen J. P. O'Connor, D. Lumkes
and J. J. Bukovich, Furloughed,
Chicago Area. 12-1-56.

Mr. D. W. Taylor
Superintendent of Police
New York Central Railroad Company
466 Lexington Avenue
New York 17, New York.

Dear Mr. Taylor:

Referring to your letter of January 1, 1957 tw "File: 56-27", concerning the matter of furloughing Patrolmen J. P. O'Connor, D. Lumkes and J. J. Bukovich, and retaining in service a junior officer, in violation of the current agreement, along with our conference in your office on January 9th, 1957, which time the case was discussed:

I note that you have denied our claim on "APPEAL". This is to advise that we are appealing your decision, and you are hereby, duly notified in due course.

Yours very truly,

/s/ Merle Barney
System General Chairman
Railway Patrolmen's Int'l
Union, New York Central System

On February 4, 1957 a notice of intent was served to National Railway Adjustment Board Fourth Division.

(Exhibit #12.)

**RAILWAY PATROLMEN'S
INTERNATIONAL UNION**

February 4, 1957

**TO NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION**

SUBJECT NOTICE: This will serve as notice of intent that within thirty (30) days the Railway Patrolmen's International Union will submit a dispute in ex parte submission involving the Patrolman class of service.

PARTIES TO DISPUTE: Railway Patrolmen's International Union, A. F. of L. - C. I. O.
vs
New York Central Railroad Company

CLAIM: Claim and request of the Railway Patrolmen's International Union that:

(a) On November 1, 1956, Patrolmen J. P. O'Connor, D. J. Lumkes and J. J. Bukovich were furloughed and an employe junior in service retained in Carrier's employ.

(b) That the senior employes be returned to service with seniority unimpaired and pay for all time lost.

DESCRIPTION OF DISPUTE:

The above named employes were furloughed in disregard of the provisions of the current agreement and a junior employe retained in service.

We certify that all data herein have been made known to Carrier.

Oral hearing is requested.

For the Employes:

/s/ W. J. Ryan
President

Question to be determined:

Whether an employe assigned to excepted position may continue in service of the Carrier while employes with more seniority rights are furloughed?

From Agreement:

Rule 10 (a) An employe shall be considered displaced:

1. When his position is abolished.
2. **When removed to make way for a senior employe.**
(Emphasis added.)
3. When he is demoted.
4. When assigned territory of his regular position is enlarged or rearranged, except under Rule 4 (c).
5. **When removed from an excepted or appointive position.**
(Emphasis added.)

Consideration of Rule 10 A (5) leaves no doubt whatsoever that employes holding excepted positions can be displaced.

Consideration of Rule 10 A (2) leaves no doubt whatsoever that employes can be displaced to make way for senior employes.

From Agreement:

Rule 8—Exceptions to Seniority.

- (a) Police officer positions assigned to desk, clerical, investigation or special duty on the staff of the Superintendent of Property Protection, Chief of Police, Inspector of Police and Captain of Police, or supervisory officers of Fire Prevention, **will be appointive but otherwise subject to these rules.** (Emphasis added.)

Consideration of Rule 8 (a) will show that the parties to the agreement never intended that employes assigned to excepted positions would not be subject to the rules of this agreement.

From Agreement:

Rule 7—Seniority.

(f) Employes promoted to higher occupations covered by this agreement shall continue to accumulate seniority in rank or ranks from which promoted. **Employes holding rights under this agreement who are appointed to official or excepted positions in the Property Protection Department of the New York Central Railroad Company and territories covered by this agreement, or to similar positions with the Railway Patrolmen's Unions, or to desk, clerical, investigation or special duty as referred to in Rule 8 (a), shall continue to accumulate seniority in own district while occupying such positions, and if displaced may exercise seniority under Rule 10.** If any other department

is involved in such an appointment, conference shall be had between the parties hereto with regard to protection of seniority rights of the employe involved. (Emphasis added.)

Consideration of Rule 7 (f) tends to show that again that those employes who are assigned or appointed to excepted positions are to receive the same rights and privileges as all other employes and are also to be subject to rules of the agreement. Rule 7 (f) also states "and if displaced" again setting out that the parties to the "Agreement" intended that the excepted employes could be displaced.

From Agreement:

Rule 7—Seniority.

(j) Seniority rights of employes covered by these rules may be exercised only in case of vacancies, new positions, **reduction of force**, demotion, or when returning from proper absence except as otherwise provided in this agreement. (Emphasis added.)

Consideration of Rule 7 (j) reveals that the parties to the "Agreement" clearly and certainly desired that seniority rights would and should be exercised in whenever there was a reduction in force.

After the above four sections of the rules of the agreement have been considered, there can be no doubt that the Carrier is in violation of the "Agreement".

To show further that the Carrier on the primary position of protest, namely, Captain E. A. Vogler know of the rules and full knowledge of their operation.

On August 1, 1956, the Michigan Central Railroad closed a freight house and all patrolmen positions at that freight house were abolished. Michigan Central Railroad is covered by the same agreement. On July 5, 1956, Captain E. A. Vogler sent the following letter to P. C. Scanlon, an officer who was being placed on furlough.

(Exhibit #13)

NEW YORK CENTRAL SYSTEM

Chicago, July 5, 1956
File: Appln.

Mr. P. C. Scanlon
6944 S. Throop Street
Chicago, Illinois.

Dear Sir:

Effective August 1, 1956 the Michigan Central Freight houses at South Water Street will be closed and all Patrolmen positions at the freight houses will be abolished effective that date.

Under the working agreement of the Railroad Patrolmen's International Union and the New York Central Railroad (M.C.R.R) you may exercise your seniority and displace a junior man in your class

on the Michigan Central roster. There are three junior men on the Michigan Central roster, namely Albert Olsen, E. A. Matthews and E. J. Smith who will hold positions after that date. However, due to A. Olsen being a Sergeant you can not displace him because you are not in that class.

E. J. Smith is on an excepted position working out of the Chief's office as an investigator and E. A. Matthews is assigned to the Chief's office as an investigator and driving officials.

These are the only two positions on the Michigan Central roster where you may exercise your displacement rights, providing you are qualified to handle the work assigned to the positions. If you believe you are qualified please write me promptly advising which Patrolman you desire to displace.

If you do not desire to displace either one of these men and elect to be shown on the roster as furloughed you will please start your vacation on July 11th—fifteen working days, regular days off July 9-10th-16th-17th-23rd-24th-30th and 31st, so advising me.

Yours truly,

/s/ E. A. Vogler
Captain of Police

Since the very same individual who two months previous to making the decision that employes with more seniority rights can not displace an employe who is assigned to an excepted position took time to explain to another employe in another similar matter just what his rights were and over what to excepted position he might exercise these rights, I and the representatives of the union can only come to one conclusion. That conclusion is that the carrier will recognize the agreement when it will fit their purpose and refuse to recognize the agreement when it will not fit their purpose or plans.

The only reason that the carrier refused to displace J. J. Hughes was that he was assigned to an excepted position. They have been proven wrong by consideration of the rules and by their own prior activity in a similar situation and, therefore, my claim that the three employes furloughed should be returned to service with seniority rights unimpaired and paid for all lost time.

The foregoing facts and arguments have been made known to the carrier by correspondence or in conference.

Oral hearing is desired.

CARRIER'S STATEMENT OF FACTS: On November 1, 1956 the Carrier found it necessary to effect a force reduction in its Police Department personnel at Chicago, Illinois. Mr. J. P. O'Connor with a seniority dating of September 11, 1943, Mr. D. J. Lumkes with a seniority dating of October 8, 1947 and Mr. J. J. Bukovich with a seniority dating of July 26, 1951, were among the personnel affected by this force reduction. Mr. J. J. Hughes with a seniority dating of January 24, 1953 was not affected by this force reduction.

In the various Chiefs' and Captains' of Police Offices throughout the Carrier's system are certain positions assigned to desk, clerical, investigation or special duties. The incumbents of such positions are appointed thereto by the Carrier in conformity with the provisions of Rule 8(a). It is free to ignore seniority regulations in making such appointments and in certain instances employes junior in service to employes holding regular patrolmen positions are occupying these so-called desk positions. Mr. J. J. Hughes was occupying a desk position in the Office of the Chief of Police at Chicago.

When Messrs. O'Connor, Lumkes and Bukovich were notified they were to be furloughed on November 1, 1956, they attempted to displace Patrolman Hughes from his desk position but the Carrier refused to permit such displacements. The Union representatives appealed the matter through the various appeal channels and the undersigned, as final appeals officer, denied the claim on January 11, 1957. This exchange of correspondence is attached as Carrier's Exhibits Nos. 1 to 9, inclusive.

POSITION OF CARRIER: In progressing this dispute the Union representatives have presented claims on behalf of three individuals, all of whom they allege had the right to displace Patrolman Hughes, a junior employe. Obviously, if these claimants did have the right to displace Patrolman Hughes, which the Carrier, of course, denies, only one of these claimants could actually do so and there can be no basis for the Union representatives claiming pay for all three employes.

The Carrier will base its arguments on the following principal points:

1. The Agreement Rules Support The Position Of The Carrier.
2. Awards Of The National Railroad Adjustment Board Sustain The Carrier.

1. The Agreement Rules Support The Position Of The Carrier.

The Railway Patrolmen's International Union won the right to represent Police Department employes of the New York Central Railroad on August 26, 1943. Shortly thereafter the Organization submitted a proposed agreement to cover rules and working conditions for the Police Department employes. After the receipt of the proposed agreement, the Carrier prepared its own proposed agreement and intermittent conferences were held between the parties in an effort to reach an agreement satisfactory to both parties.

From the very outset of the conferences the Carrier recognized the need of having the unrestricted right to select individuals for desk, clerical, investigation or special duty positions. The very first agreement it proposed to the Union representatives contained the following provisions as part of proposed Scope Rule 1(a):

"These rules shall apply to the Sergeants, Patrolmen, Special Patrolmen, Warehouse Patrolmen, Fire Patrolmen, Guards, and Watchmen in the Property Protection Department of the railroad signatory hereto, except positions assigned to desk, clerical or investigation duty in the offices of Chief of Police, Inspector of Police, and Captain of Police, which positions will be appointive but otherwise subject to these rules." (Emphasis added.)

An agreement was finally consummated on April 1, 1945 and the provision concerning individuals assigned to desk, clerical and investigation duty was adopted as Rule 8 (a) and read as follows:

"Police officer positions assigned to desk, clerical, investigation or special duty on the staff of the Superintendent of Property Protection, Chief of Police, Inspector of Police and Captain of Police, or supervisory officers of Fire Prevention, will be appointive but otherwise subject to these rules."

As part of the agreement with respect to Rule 8(a), the Carrier furnished the Union representatives with a letter designating the locations and the individual positions that would be considered as being subject to Rule 8(a). The Chief of Police at Chicago had five (5) such positions, one of which is the position now held by Patrolman J. J. Hughes.

The April 1, 1945 Agreement was revised on March 1, 1947 and again on September 1, 1949, but Rule 8(a) as agreed to April 1, 1945 has never been revised.

There is no ambiguity in this rule. It gives the Carrier the right to select an individual for one of the desk, clerical, investigation or special duty positions without regard to seniority. The rule says these positions will be appointive but otherwise subject to these rules. This latter phrase means these individuals would have the protection of the Schedule Agreement rules as for example, rates of pay, vacation privileges, discipline, etc. It certainly did not mean the incumbents of such positions were to be affected by the provisions of the seniority rule and subject to displacement by a senior employe under the application of Rule 7(j) reading:

"Seniority rights of employes covered by these rules may be exercised only in case of vacancies, new positions, reduction of force, demotion, or when returning from proper absence except as otherwise provided in this agreement."

This rule does not confer upon employes the right to bump employes on appointive positions. If such were the intent there was no logic in the Carrier insisting on the provisions as contained in Rule 8(a). It would simply make Rule 8(a) meaningless.

Rule 10 is the Displacement Rule and paragraph (a) thereof says an employe shall be considered displaced—

1. When his position is abolished.
2. When removed to make way for a senior employe.
3. When he is demoted.
4. When assigned territory of his regular position is enlarged or rearranged, except under Rule 4(c).
5. When removed from an excepted or appointive position.

Rule 10(a)-5 makes it very definite that persons occupying "appointive" positions will be considered "displaced" only when they are "removed". Since the Carrier alone has the unrestricted right to select the individuals,

they likewise can only be "removed" by the Carrier. If they can be displaced by senior employes, what was the reason for Rule 10(a)-5? There would have been no need whatever for that provision in the agreement if it had been intended that senior employes could displace men on these appointive positions. In that case Rule 10(a)-2 reading: "When removed to make way for a senior employe" would have been considered applicable and there would have been no necessity to have a provision like Rule 10(a)-5. But the parties recognized there was a distinction between these appointive positions and other positions under the agreement and Rule 10(a)-5 was adopted to cover the incumbents of appointive positions.

Rule 7(f) reads:

"Employes promoted to higher occupations covered by this agreement shall continue to accumulate seniority in rank or ranks from which promoted. Employes holding rights under this agreement who are appointed to official or excepted positions in the Property Protection Department of the New York Central Railroad Company and territories covered by this agreement, or to similar positions with the Railway Patrolmen's Unions, or to desk, clerical, investigation or special duty as referred to in Rule 8(a), shall continue to accumulate seniority in own district while occupying such positions, and if displaced may exercise seniority under Rule 10. If any other department is involved in such an appointment, conference shall be had between the parties hereto with regard to protection of seniority rights of the employe involved."

This rule makes it plain that employes on these appointive jobs will "continue to accumulate seniority * * * while occupying such positions". The rule then goes on to say "and if displaced", but as hereinbefore stated they are considered displaced only when "removed" and they can only be removed by the Management. There has been no violation of Rule 7(f).

Let us just analyze the situation involving these three claimants. At the time of Patrolman Hughes' selection for the desk position, these three employes were all his senior. But the Carrier did not feel any one of them was as well qualified as Patrolman Hughes, so no one of them was selected. Patrolman Hughes' selection was accepted without protest because it was recognized Rule 8(a) gave the Management the right to disregard seniority in its choice of individuals for these desk positions.

Now the Union representatives are saying the Carrier must allow these same claimants, who in the very first place were not considered as well qualified, to now fill Patrolman Hughes' desk position simply because they are his senior. They are in effect saying it is proper for the Carrier to fill one of these Rule 8(a) positions without regard to seniority today, but tomorrow a senior employe can displace him. Such reasoning would make the Carrier's free choice in making appointments under Rule 8(a) nothing but a mockery.

If the Carrier has the unrestricted right to fill these Rule 8(a) positions without regard to seniority, by agreement, and then had to permit senior employes to displace thereon, an absurd and ridiculous situation would exist. Rule 8(a) was adopted because the parties recognized there were certain positions that required special qualifications. They knew that in many instances the senior employe could not efficiently fill such positions. All patrolmen are not adapted to desk work. The employes themselves many times

do not want these positions. For your Board to sustain the Union representatives would make Rule 8(a) meaningless and the claim should be denied.

2. Awards Of The National Railroad Adjustment Board Sustain The Carrier.

The Third Division of the National Railroad Adjustment Board rendered two awards, both of which covered disputes with the Telegraphers' Organization on the Long Island Railroad and involved somewhat identical situations as prevail in the instant dispute.

Award 5045 covered a situation concerning the right of an employe named R. L. Johnson to displace on an agency position at Long Beach, N. Y., designated as an asterisk position. The Carrier is permitted to fill such positions without regard to seniority. Johnson, the incumbent of the agency position, had been promoted to a supervisory position and the Carrier had selected another employe to fill the agency position. Johnson's supervisory position was subsequently abolished and the Carrier permitted him to return and displace the currently assigned employe from the agency position.

A rule (paragraph G of Article II) governing the filling of asterisk positions reads as follows:

"G. Notices of permanent vacancies in positions designated by an asterisk (*) in the Rate Schedule shall be posted for the purpose of giving employes an opportunity to present their qualifications for consideration for appointment to such positions. The Company may fill such vacancies by appointment from the seniority roster without regard to seniority."

The employes contended it was improper to have permitted Johnson to displace the employe from the asterisk designated agency and the Board sustained the position of the employes. It concluded its opinion by saying:

"We necessarily conclude that Carrier could properly appoint an employe on the seniority roster to the Agent's position at Long Beach without regard to seniority only in the event of a permanent vacancy in that position. The right of Johnson to displace is limited to junior employes holding non-asterisk positions."

In Award 6723 the employes had argued that it was proper to permit an employe holding an asterisk position to displace another employe holding an asterisk position when the rest days of his position were changed. The employes contended that since the occupants of asterisk positions are subject to the agreement they were fully subject to displacement rules and cited such rules in support of their position. Rule E-1 and E-2 were the rules involved and read:

"E-1. An employe may displace a junior employe by the exercise of his seniority in the following circumstances:

"(7) When he elects to choose another position in accordance with the provisions of paragraph E-2 of this Article III;

"E-2. An employe may remain on his regular position or may exercise seniority in accordance with the provisions of Paragraph E-1 of this Article III, if he indicates to the proper officer his intention to do so, in writing, within ten (10) days of the date on which any of the following circumstances occur."

The Board in its award also cited the rule (Paragraph G of Article II) about filling asterisk positions which has been quoted in the comments about Award 5045 above referred to. The Board denied the employes' claim and in the concluding paragraph of its award said:

"To apply the general displacement rule to asterisk positions as contended for by the Organization, would render Carrier's free choice in making appointments thereto a mockery. We say this because under such theory, any such appointee could immediately thereafter be swept from the position by a senior employe irrespective of his qualifications, under any one of eight circumstances set forth in Rule E-1. We should not assume that the parties intended to do a useless act in negotiating Rule G-II, nor, should we so interpret an Agreement so as to result in an absurdity when a path is open to effectuate an expressed intent. Claimant was considered for this particular asterisk position based upon his special qualifications as reflected by his application. He is not necessarily qualified for other asterisk positions, including other positions of unassigned relief agent. Note spread in salary between the different asterisk positions.

"Further, we stated in Award 5045, a dispute between the same parties, that 'The right * * * to displace is limited to junior employes holding non-asterisk positions.' While such statement was gratuitously made, we believe that it expressed a correct interpretation of the rules involved in both disputes."

That is the situation in the instant dispute. Patrolman Hughes' desk position is similar to the asterisk positions. In both instances the positions can be filled without regard to seniority. That being the case, then no holder of any Rule 8(a) desk position can be subject to displacement by any senior employe. The only time such desk position incumbent can be removed is by action of Management in which event said incumbent acquires displacement under Rule 10(a)-5 wherein it says: "When removed from an excepted or appointive position." Only the Carrier has the right to remove Patrolman Hughes from his desk position. Until it finds the need to do so it is proper to continue Patrolman Hughes on his desk position and none of the claimants have any contractual right to his position. As Referee Donaldson so aptly said in Award 6723:

"To apply the general displacement rule to asterisk positions as contended for by the Organization, would render Carrier's free choice in making appointments thereto a mockery. We say this because under such theory, any such appointee could immediately thereafter be swept from the position by a senior employe irrespective of his qualifications, under any one of eight circumstances set forth in Rule E-1. We should not assume that the parties intended to do a useless act in negotiating Rule G-II, nor, should we so interpret an Agreement so as to result in an absurdity when a path is open to effectuate an expressed intent."

There is no merit to the employes' claim and it should be denied.

All of the facts and arguments herein set forth have been made known to the Union representatives in the handling of the claim on the property.

Oral hearing is desired.

(Exhibits not reproduced.)

OPINION OF BOARD: Due to a reduction in force the three claimants were furloughed, while an employe junior in service, holding an appointive position, assigned pursuant to Rule 8 (a), as desk officer, was retained in Carrier's employ in his appointive position.

The sole question to be resolved is whether the occupant of an appointive position may be displaced by an employe having seniority when a reduction in force occurs.

It is conceded that under Rule 8—Exceptions to Seniority (a), which reads as follows:

“Police officer positions assigned to desk, clerical, investigation or special duty on the staff of the Superintendent of Property Protection, Chief of Police, Inspector of Police and Captain of Police, or supervisory officers of Fire Prevention, will be appointive but otherwise subject to these rules.”

the carrier may appoint without regard to seniority. Reading together Rule 8(a) and Rule 10(a), particularly paragraphs 2 and 5 thereof, set forth below:

“An employe shall be considered displaced:

1. When his position is abolished.
2. When removed to make way for a senior employe.
3. When he is demoted.
4. When assigned territory of his regular position is enlarged or rearranged, except under Rule 4(c).
5. When removed from an excepted or appointive position.

* * *.”

we are forced to agree with carrier's contention that the occupant of an appointive position cannot be displaced by the exercise of seniority of an employe suffering from a reduction in force.

As we see it, any other interpretation would completely nullify the express contractual right of the carrier to fill appointive positions under the “Exceptions to Seniority” rule and would lead to an illogical result. Rule 10 (a) 5 provides for removal from an appointive position and we deem its purport to be removal by the Carrier, dissimilar to 10 (a) 2 which permits removal by the operation of an exercise of seniority. We think this indicates and points up the intention of the parties when they negotiated and agreed to these rules. Confronted with alternatives, capable of leading to a logical, or an illogical result, consistent procedure and construction dictate the adoption of the former.

Rule 7 (f) cited by employes provides for exercise of seniority by an employe who is displaced from an appointive position pursuant to Rule 10 (a) 5 and has no application here. Rule 7 (j) providing that seniority rights may be exercised in case of reduction in force must yield to any exception to seniority which of course is to be found covered by Rule 8 (a) and is, therefore, not controlling.

In conclusion we cannot adopt the one instance of a contrary interpretation by a subordinate Carrier official as establishing a controlling practice on the property, in the light of the clear and unambiguous language of the rules discussed above. The claim will be denied.

FINDINGS: The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The Carrier and the Employes involved in this dispute are respectively Carrier and Employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

AWARD

Claim is denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION**

**ATTEST: Patrick V. Pope
Secretary**

Dated at Chicago, Illinois, this 3rd day of June, 1958.