

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES
NORTHWESTERN PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM.—

"Claim of employes of Northwestern Pacific Railroad Company that position of Assistant Chief Clerk to the Superintendent at Sausalito, California, be bulletined and assigned to an employe on the seniority roster of the Southern Division and that the successful applicant be compensated for his net wage loss from November 1, 1935."

STATEMENT OF FACTS.—Position of Assistant Chief Clerk to the Superintendent, Southern Division, Sausalito, California, became vacant, November 1, 1935. It was assigned, without bulletin, to one A. W. Anderson, who held no seniority rights on any roster under the Clerks' Agreement.

POSITION OF EMPLOYES.—Rule 17, captioned "Bulletining positions," contains no exception in regard to the many positions within the scope of the Clerks' Agreement, except truckers and laborers, and the position in question, is therefore, not excepted therefrom. While this position is excepted from the promotion, assignment, and displacement rules, the provisions of "Bulletining Positions" do apply. Section (d) of Rule 1 provides that in filling these excepted positions, preferred consideration will be given employes covered by the agreement, and the assignment of an employe who does not carry seniority rights under the provisions of the Clerks' Agreement is certainly not giving preferred consideration to employes covered thereby.

Rule 30 provides that positions of supervisory agents will be bulletined when vacancies occur, and it is not unreasonably assumed that if the more important position of agent must be bulletined, it was also the intent of the agreement to require the bulletining of positions listed in sub-section (d) of Rule 1.

As evidence that the carrier applied our interpretation in construction of the rules herein involved, we submit copy of bulletin covering the position in question, filed on April 30, 1930, and assignment bulletin, No. 9, dated May 12, 1930, when this position was previously vacated and filled. We also submit copy of bulletin No. 1 of March 3, 1936, on which position of Depot Master at the San Francisco Ferry is shown to have been open for application, together with Bulletin No. 2, dated March 14, 1936, showing the position of Depot Master was assigned to H. H. Fowler. Both the position involved in this dispute and the position of Depot Master at the San Francisco Ferry are covered by the provisions of subsection (d), Rule 1. The following rules of the agreement between the parties, bearing effective date of April 1, 1926, are cited in support of our contentions:

RULE 1—SCOPE

"These rules shall govern the hours of service and working conditions of the following employes, subject to the exceptions noted below:

"(1) Clerks:

"(a) Clerical workers.

"(b) Machine operators.

"(2) Other office, station, and store employes, such as office boys, messengers, chore boys, train announcers, gatemen, baggage and parcel room employes, train and engine crew callers, operators of certain office or station appliances and devices, telephone switchboard operators, elevator operators, office, station, and warehouse watchmen and janitors.

"(3) Laborers employed in and around stations, storehouses, and warehouses.

EXCEPTIONS

"These rules shall not apply to:

"(a) Laborers on piers, wharves, or other waterfront facilities not a part of the regular freight station forces; or to individuals where amounts of less than thirty dollars (\$30.00) per month are paid for special services which take only a portion of their time from outside employment or business; or to individuals performing personal service not a part of the duty of the carrier.

"(b) General Office force in San Francisco, including City Ticket Office.

"(c) Chief Clerks to Superintendents, General Superintendent Motive Power & Equipment, General Storekeeper and Car Service Agent.

"(d) The following positions are excepted from promotion, assignment, and displacement rules, but in filling excepted positions preferred consideration will be given employees covered by this agreement:

"Superintendents' Offices:

"Assistant Chief Clerk.

"Division Accountant.

"Personal Stenographers.

"Head Timekeeper.

"Genl. Superintendent Motive Power & Equipment:

"Personal Stenographer.

"Head Timekeeper.

"General Storekeeper:

"Personal Stenographer.

"Stationer.

"Store Foreman.

"Storekeeper at Sausalito, Willits, and South Bay.

"Superintendent Electrical Activities:

"Personal Stenographer.

or to Chief Clerk or one stenographer, in the following offices:

"Division Engineers.

"General Foremen B. & B.

"Trainmasters.

or to positions in San Francisco Ferry and Freight Stations listed below:

"San Francisco Ferry:

"Chief Clerk-Cashier.

"Personal Stenographer.

"Baggage Agent.

"Depotmaster.

"San Francisco Freight:

"Chief Clerk-Cashier.

"General Foreman.

RULE 17—BULLETINING POSITIONS

"(a) All new positions and vacancies of over thirty (30) days' duration, except truckers and laborers, shall be bulletined.

"(b) Bulletins will be promptly posted in places accessible to all employees affected, and will be open for bid for a period of ten (10) days from employees in the seniority district where such new positions and vacancies occur.

"(c) Bulletins will show:

"Location.

"Position.

"Hours of Service.

"Rates of Pay.

"(d) Bids for such positions will be filed with the designated officer within ten (10) days from date of issue of bulletin.

"(e) Assignments will be made within ten (10) days after the closing date of receiving bids, and successful applicant will be placed on position as soon as practicable.

"(f) The name and seniority date of successful applicant will be posted for a period of ten (10) days where the position was bulletined.

"(g) Preferable positions of trucker and laborer will be open to choice of senior truckers and laborers whose names are on a seniority roster."

POSITION OF CARRIER.—The National Railroad Adjustment Board, Third Division, cannot legally assume jurisdiction in this dispute for the reason that the claim constitutes a request upon the carrier for a change in rules and working conditions, such as would classify under Section 6 of the Railway Labor Act, and the carrier, therefore, respectfully protests against the Board assuming jurisdiction of this case.

The Local and General Committees in the past have asked that the position in question be bulletined and that it be filled with an employe covered by the agreement, which the management has declined to do. There is no requirement in the agreement that this position be assigned. On the contrary, the position is clearly excepted from the rule providing for the assignment of positions.

The agreement provides that preferred consideration will be given employes covered by the whole agreement. Employes' request that the position be assigned to an employe on seniority roster of Southern Division is contrary to the agreement.

The only requirement in the agreement as to the filling of this excepted position is that preferred consideration be given employes covered by the agreement. Employes referred to are those on the whole railroad, covered by the Clerks' Agreement, and not merely employes on the Southern Division or those only on the seniority district of the Superintendent's office, Southern Division.

On November 1, 1935, the position was vacated, and A. W. Anderson was appointed to the place. The position was not bulletined, and no assignment was made. Before filling the position, preferred consideration was given to all employes covered by the Clerks' Agreement, and it was the judgment of the management that Mr. Anderson be appointed thereto.

The only omission, if there be one, on the part of the carrier is that the position was not bulletined, an anomalous situation, for, under Rule 1 (d), the Assignment Rule 17 (e) is excepted. To dispose of this case, the carrier, in conference with the Employes' General Committee, offered to bulletin the position, but this was not satisfactory to the Clerks' Organization. Outside of this one thing, bulletining of the position, the request of the employes is for a new rule. Except as to the bulletining of the position, it is not within the jurisdiction of the Board to grant the request of the employes.

OPINION OF BOARD.—The position of Assistant Chief Clerk to Superintendent at Sausalito is "excepted" from the provisions of the promotion, assignment, and displacement rules. It is not excepted from the provisions of "Bulletining Positions" Rule 17 (a), but is excepted from other provisions of Rule 17. When a future vacancy occurs, this position should be bulletined in accordance with Rule 17 (a), and in filling it preferred consideration should be given to employes covered by the agreement in accordance with Rule 1 (d).

FINDINGS.—The Third Division of the Adjustment Board, after giving 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 the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the evidence does not sustain the claim as presented.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 12th day of February, 1937.