

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS
AND STATION EMPLOYES**
**THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY**
**THE CHICAGO, ROCK ISLAND & GULF RAILWAY
COMPANY**

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim of Mr. M. H. Beall, seniority date April 7th, 1921, clerk in office of Auditor Disbursements, Chicago, Ill., for payment at rate of \$132.00 per month, instead of at rate of \$121.75 per month, from February 4th, 1937 to March 5th, 1937."

JOINT STATEMENT OF FACTS: "On February 1st, 1937, Mr. Wayne Williams, seniority date October 11, 1923, clerk in office of Auditor Disbursements, Chicago, was appointed, without bulletin, to fill a temporary vacancy on position of Index Clerk, rate \$132.00 per month. On February 4th, 1937, Mr. M. H. Beall, seniority date April 7th, 1921, then working on position paying \$121.75 per month, made written request upon the Auditor Disbursements for assignment to the position of Index Clerk, occupied temporarily through appointment, by Mr. Wayne Williams. On March 1st, 1937, the temporary vacancy occupied by Mr. Wayne Williams was advertised as vacant on regular bulletin and assignment made to senior applicant effective March 6th, 1937. Mr. M. H. Beall was not permitted to take the position of Index Clerk, rate \$132.00 per month, during period February 4th, 1937, to March 6th, 1937."

POSITION OF EMPLOYES: "Rule 6 of Agreement effective January 1st, 1931, reads as follows:

'RULE 6. VACANCIES—NEW POSITIONS. Appointment to vacancies or new positions will be governed by these rules.'

"Rule 7 of the same Agreement reads as follows:

'RULE 7. PROMOTION BASIS. Employees covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail, except, however, that this provision shall not apply to the excepted positions.

'NOTE.—The word "sufficient" is intended to more clearly establish the right of the senior clerk or employe to bid in a new position or vacancy where two or more employes have adequate fitness and ability.'

"The employees contend that Mr. M. H. Beall should have been placed on position of Index Clerk, rate \$132.00 per month, effective February 4th, 1937. Mr. Beall is a senior employee to Wayne Williams and has sufficient ability to properly perform the work on the position. We contend the provisions of Rules 6 and 7 were not complied with, likewise general interpretation governing the filling of short or temporary vacancies was not complied with.

"The employees contend Mr. M. H. Beall should have been assigned to this position and now ask that he be paid at the rate of \$132.00 per month during the time he was denied the right to perform the work on the position of Index Clerk."

POSITION OF CARRIER: "Rule 19 of the current clerical agreement reads:

'Short Vacancies. Positions or vacancies of thirty days, or less, duration, shall be considered temporary, and may be filled without bulletining. However, when found vacancy will extend beyond thirty-day limit, same shall be immediately bulletined, showing, if practicable, expected duration of vacancy.'

"The accepted and understood application of this rule, insofar as the Accounting Department is concerned, has always been that short vacancies of thirty days or less could be filled without regard to seniority. It has been the practice to fill such short vacancies with qualified employees then in the service if available. The employees are now asking that your Board change the application of this rule in the Accounting Department.

"We have no objection to giving consideration to the request of any employees who may desire a short vacancy, but we do not concede that we are obligated under the agreement to recognize seniority in such cases. To concur in the request of the employees would be equivalent to eliminating Rule 19 from the schedule, because to allow the claim would mean that the same procedure should be followed in filling short vacancy positions as is followed in filling permanent positions.

"In filling short vacancies it is the practice, in the Accounting Department, to use the employee whom the supervising officer feels can best perform the work during the short time necessary and whose absence from his regular position will cause the least amount of disturbance in his respective department.

"The interpretation following Rule 19, which reads:

'New employees filling positions or vacancies under this rule will not be considered as establishing seniority under Rule 3.'

shows that under this rule it was contemplated that new employees without any seniority can be employed to fill these positions."

OPINION OF BOARD: It is shown in the Joint Statement of Facts that on February 1, 1937, an employee in the office of Auditor Disbursements, Chicago, junior to Mr. Beall, was assigned to fill a temporary vacancy on the position of Index Clerk, rate \$132 per month. On February 4, 1937, Mr. Beall, occupying position paying \$121.75 per month, made written request for assignment to this temporary vacancy, but was not permitted to exercise his seniority rights thereon.

The carrier represents that the understood and accepted application of Rule 19, insofar as Accounting Department is concerned, has always been that short vacancies of 30 days or less could be filled without regard to seniority. Also, that in 1933 the General Manager of the Operating Department agreed with the employees that thereafter, in the Operating Department, a new application would be followed in filling short vacancies; i. e., employees in the service making request on the proper officer would be permitted, on a seniority

basis, if qualified, to fill the vacancy. Further, that the General Manager had no authority to change the application of Rule 19 in any department other than the Operating Department.

The question here for determination is whether the interpretation of Rule 19 issued by the General Manager in December, 1933 should be applied in the Accounting Department. The agreement is applicable to employees (enumerated in Rule 1—Scope) of all departments, subject to the exceptions stipulated in Rule 1. Uniform interpretation and application of Rule 19 of the agreement are contemplated, except as may be otherwise mutually agreed to by the parties.

The interpretation and application of Rule 19 adopted and applied by the Operating Department in 1933, should govern departments where it heretofore has not been applied, effective from the date of this award, in view of which the claim of M. H. Beall for compensation should not be allowed.

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 employees involved in this dispute are respectively carrier and employees 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 interpretation and application of Rule 19 as adopted and applied by the Operating Department in 1933, shall govern in all departments, effective from the date of this award and claim of M. H. Beall for compensation is not allowed.

AWARD

Interpretation of Rule 19 as adopted and applied by the Operating Department in December, 1933, shall apply to all departments covered by the agreement where not heretofore applied, effective from the date of this award. Claim for compensation is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of January, 1938.