

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee.

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS
AND STATION EMPLOYES**

READING COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that Charles J. Santore and Mathew Delaney, Clerks, Central Billing Bureau, Philadelphia, were entitled to and should have been paid at the rate of \$150.00 and \$130.00 per month, respectively, for a period of eight days, namely, June 18, 21, 22, 23, 24, 25, 28 and 29, 1937, also that they be reimbursed for wage losses suffered by reason of Carrier's failure and refusal to properly promote them as a result of vacancy on position of Rate Clerk on such days and dates."

EMPLOYES' STATEMENT OF FACTS: "On and before June 18, 1937, W. F. Tapper was the regularly assigned incumbent of position in the Central Billing Bureau classified as Rate Clerk and rated at \$150.00 per month. Mr. Tapper continued to be the regularly assigned incumbent of such position after June 18, 1937, and after June 29, 1937.

"The duties of said position were:

Rating of shipping orders in conjunction with tariffs in effect.
Answering correspondence in connection with rates.
Handling information and keeping account of embargoes in effect.

"On June 18th, 1937, Mr. Tapper was required by the Carrier to go to another office, Sears Station, and perform service due to a temporary increase in business at that station on the days and dates stipulated in the Statement of Claim. Mr. Tapper did not perform any of the regularly assigned duties of position of Rate Clerk, Central Billing Bureau on the days and dates in question.

"The position of Rate Clerk in the Central Billing Bureau regularly assigned to Mr. Tapper was not abolished on the days and dates in question. The Carrier failed and refused to promote Charles J. Santore to the vacancy on said Rate Clerk's position caused by the absence of the regular incumbent, Mr. Tapper, as hereinbefore outlined. Mr. Santore was the senior qualified clerk on that roster entitled to promotion to said vacancy on the dates stipulated.

"Mr. Mathew Delaney was the next in line for promotion and would have been entitled to be promoted to vacancy on Clerk Santore's position had the Carrier promoted Clerk Santore to Clerk Tapper's position on the dates stipulated.

OPINION OF BOARD: This case presents the question whether regular assigned positions must be filled every working day of the week. Stated another way the question is whether the six day guarantee rule applies to "positions" as well as "employees."

The question was first presented in Docket CL-356 and covered by Award No. 413 (See also Awards Nos. 414, 415 and 416). In that case Referee Devaney reached the conclusion that the word "employees" as used in Rule 20 (g) of the Agreement there under consideration was synonymous with the word "positions" and that the six day guarantee applied to positions as well as employees.

The same question was again before this Board in Docket CL-547, Award No. 546, and while Referee Millard based his opinion upon an entirely different rule and makes no reference to Award No. 413 the effect of the conclusion reached is the same as that reached in the earlier award.

In the instant case the same question is presented under a different set of facts and a different agreement. The question appears to the writer to be too important to be left to interpretation of contracts where one man thinks his guess as good as another. However, it is before us in this case and must be disposed of.

The record in this case shows that W. F. Tapper was a regularly assigned incumbent of a position of Rate Clerk in the Central Billing office of the Reading Company in Philadelphia, Pa. A strike of truckers employed by Sears, Roebuck Company resulted in an increase in the volume of rating and billing work at Sears Station, a suburban office of the Reading Company outside the Philadelphia Central Billing Office Seniority District. This increase of work could not be handled by the rate clerks at Sears Station and presumably no others in that seniority district being available, Tapper was sent there to assist with the work. He performed at Sears Station duties of the kind normal to his position of rate clerk. His position at the Central Billing Office was not abolished nor was it temporarily filled by anyone else on the days Tapper worked at Sears Station and Tapper worked in his position at the Central Billing Office on days, during the period in question, when his services were not required at Sears Station. Tapper's status as an employe of the Central Billing Office was not disturbed during the period in question and he was paid as though all his services had been performed at that point.

The claims before us were made by employees of the Central Billing Office junior to Tapper who claim that they should have been advanced on the days Tapper was away from that office because of his absence. No question of the carrier's right to assign Tapper to do the work at Sears Station is presented.

The agreement before us contains no specific provisions relating to the rights and duties of the respective parties under circumstances such as are presented in this case. They must be determined from the context of the agreement as a whole. Employees invoke several rules (15, 16, 17, 23, 32, 33, 37, 43 and 63) of the Agreement in support of their claims. However, the claims must stand or fall upon the interpretation of Rule 15 in the light of other provisions of the agreement. Rule 15 is as follows:

"RULE 15.

GUARANTEE. Except as provided in Rule 11, nothing within this Agreement shall be construed to permit the reduction of days for regular assigned employees covered by this Agreement below six (6) days per week, except that this number may be reduced, in a week in which holidays occur, by such holidays.

This Rule shall not apply to those employees in Group 2 (b) working in the Stores Department. The Management and the Committee

will endeavor to work out as many six (6) day assignments for these Stores Department employees as possible, consistent with the requirements of the service."

The exception made in Rule 15 is to the so-called reporting and not used rule, wherein it is provided that employees required to report for work at regular starting time and prevented from performing services by conditions beyond the control of the carrier will be paid for actual time held with a minimum of two (2) hours. If the word "employees" as used in Rule 15 means "positions" as was held in Award No. 413 then cases falling under Rule 11 constitute the only exceptions under which a "position" may be filled below six days per week. Yet we find that under Rule 21 an employee may be absent on sick leave and the "position" need not be filled provided the other employees keep the work up. The same is true under Rule 22 as to vacations and under Rule 35 carrier is allowed five days within which to bulletin vacancies and five additional days within which to fill such positions. It must therefore follow that the word "employees" as used in Rule 15 of the current agreement does not mean "positions" even though the words may be used interchangeably in other places in the agreement. This does not mean that the carrier is free to leave established positions unfilled as other rules of the agreement amply cover such a situation. See Rules 35, 42 and 45.

It has already been pointed out that while Tapper was used by the carrier to meet an emergency arising in another seniority district his status as an employee of the Central Billing Office was not disturbed and as no vacancy was created by his temporary use elsewhere no rights accrued to other employees under Rules 32 and 33 of the agreement. As the claims in this case are based on rights asserted under these rules they must fail. Rule 45 is not applicable to the facts and is not invoked in this case.

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 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 the carrier in the action complained of in this dispute did not violate the terms of the agreement between the parties.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of January, 1939.