

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**I. L. Sharfman, Referee**

**PARTIES TO DISPUTE:**

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

**FLORIDA EAST COAST RAILWAY**

**W. R. Kenan, Jr., and S. M. Loftin, Receivers**

**STATEMENT OF CLAIM:** "Claim of the System Committee of the Brotherhood that—

"The Carrier violated the rules of the Clerks' Agreement, as hereinafter stipulated, in failing and refusing to post bulletin advertising position of ticket clerk, No. 2398, Daytona Beach Passenger Agency, to the entire seniority district when this seasonal position was advertised on March 4, 1939, and that employees involved in or affected by the Carrier's actions be compensated for all wage losses."

**EMPLOYEES' STATEMENT OF FACTS:** "On March 4, 1939, Ticket Agent T. E. Sossamon issued bulletin, copy of which is attached marked employees' exhibit 'A,' advertising seasonal position No. 2398, ticket clerk, Daytona Beach Passenger Agency. This position was advertised only to employees in the Daytona Beach Passenger Agency. On March 11, 1939, Mr. Sossamon issued bulletin, copy of which is attached marked employees' exhibit 'B,' assigning Mr. W. S. Cross, a non-employee, to the position. At the time this position was advertised only to employees in the Daytona Beach Passenger Agency it was apparent there were no employees in that office who would make bid for same."

**CARRIER'S STATEMENT OF FACTS:** "1. The current agreement between the Railway and the Brotherhood became effective January 1, 1938, and Rule 7 (b) of that agreement reads as follows:

'Seasonal positions, not anticipated to be in existence more than one hundred eighty (180) consecutive days a year, will be bulletined only in the office where created and will not be open to bid to the entire seniority district.'

"2. On March 4, 1939 the ticket agent at Daytona Beach, Florida posted a bulletin advertising to employees of the Daytona Beach Passenger Agency, a seasonal position of ticket clerk, anticipated to be in existence until May 5, 1939. There were no bids placed for the vacancy by the employees in the Daytona Beach Passenger Agency, and W. S. Cross, an experienced ticket clerk, was employed to fill the vacancy. A copy of the bulletin advertising the vacancy is attached, marked Carrier's Exhibit 'A,' and a copy of the bulletin, awarding the position to W. S. Cross is attached, marked Carrier's Exhibit 'B.'

would be confined to the last station where he held a regular assignment, and the temporary short vacancies that he held at various other stations should not be considered.

'Will you kindly advise if you concur in this thought about the application of the rule in question?'

"On October 20, 1938, the General Chairman of the Brotherhood responded as follows:

'While we concur in your thought about the application of Rule 7 (b), as indicated in the last paragraph, first page of your letter, we still are of the opinion that the way to settle any misunderstandings on the part of the employes, and others, about an employe's office rights, is to cancel paragraph (b) of Rule 7, abolish any office rights, and advertise all vacancies in excess of thirty days to all employes in the seniority district, thereby removing restrictions against the exercise of seniority rights.

'We believe that you will find by removing this restriction that it will in no way adversely affect the efficient handling of the carrier's work, and will not cause the confusion that you have so often spoken about.

'We would appreciate it if you will give this feature of the rule further study and consideration.'

"On October 25, 1938 the General Superintendent wrote the General Chairman, in response to the above, in part as follows:

'I cannot agree to cancel Rule 7 (b), as the conditions which prompted the writing of that rule into the agreement are as compelling now, as they were when the agreement was adopted.'

"The declination of the carrier to agree to a modification or cancellation of Rule 7 (b) has caused the Brotherhood to seek to accomplish a change in the rule through the filing of a claim in the form of an alleged dispute, for consideration by the Third Division of the National Railroad Adjustment Board.

"3. It is the position of the carrier that the position at Daytona Beach Passenger Agency was properly advertised in accordance with Rule 7 (b), that the other rules of the agreement cited by the employes are not pertinent to the issue, and that the claim should be denied. In the discussion of this matter between the General Chairman of the Brotherhood and representatives of the carrier, no showing was made by the General Chairman that any employe had suffered any wage loss, or that compensation was due any employe.

"4. The General Chairman who instituted this claim is the same General Chairman who represented the Brotherhood during the negotiations leading to the present agreement, and the same General Chairman who handled with the carrier the correspondence above quoted."

There is in evidence an agreement between the parties bearing effective date of January 1, 1938.

**OPINION OF BOARD:** The precise issue in this case is whether or not the position in question was properly bulletined. As appears in the statement of claim, the employes contend that "the Carrier violated the rules of the Clerks' Agreement . . . in failing and refusing to post bulletin advertising position of ticket clerk, No. 2398, Daytona Beach Passenger Agency to the entire seniority district when this seasonal position was advertised on March 4, 1939." There is also a claim for reparations—"that employes involved in or affected by the Carrier's actions be compensated for all wage

losses"—but it is obvious that the reparations claim is necessarily based upon the alleged violation of the bulletining rules of the Agreement.

The bulletining of seasonal positions of the character here involved is expressly covered by Rule 7 (b) of the Agreement, which specifies: "Seasonal positions, not anticipated to be in existence more than one hundred eighty (180) consecutive days a year, will be bulletined only in the office where created and will not be open to bid to the entire seniority district." It is clear that the carrier, in bulletining this position, complied with these provisions. This rule was placed in the Agreement to meet the special circumstances created by the seasonal character of a large volume of the carrier's traffic, and it must be applied according to its express terms. If the employees, as contended, deem such application to be inimical to their vital interests, it is open to them to negotiate for its modification or elimination. It is not the function of this board to disregard or change the rule under such circumstances.

Rule 9 of the Agreement, upon which primary reliance is placed by the employees, contains the general stipulations as to bulletins for new positions and vacancies. At the very beginning of this rule—in paragraph (a)—the situations covered by Rule 7 (b) are expressly excepted, and this exception must be held to apply to the rule as a whole, including paragraph (b), which provides: "When it is apparent that the position will not be filled from the roster on which the position is located, a bulletin will be posted to any other rosters within the seniority district at the same time, in order to avoid delay in the filling of the position." But even if there were no express incorporated exception in Rule 9, the specific stipulations as to seasonal positions contained in Rule 7 (b) would necessarily remove such situations from the general rules as to bulletins.

The other rules of the Agreement upon which the employees rely deal with the recognition of seniority rights in response to applications or bids which must be entertained by the carrier under the Agreement. They do not involve the bulletining of positions, in connection with which the sole allegation of a violation of the Agreement is made in the employees' statement of claim, and it must be remembered that Rule 7 (b) not only provides that these seasonal positions "will be bulletined only in the office where created," but "will not be open to bid to the entire seniority district." These other rules, of general character, are necessarily qualified by the provisions of Rule 7 (b), which are specifically applicable to seasonal positions.

**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 employee involved in this dispute are respectively carrier and employee 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 of record discloses no violation of the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 2nd day of May, 1940.