

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 stenographer-clerk, No. 2608, Miami Passenger Agency, to the entire seniority district, when this seasonal position was advertised on December 13, 1938."

EMPLOYEES' STATEMENT OF FACTS: "On December 13, 1938, Stationmaster-Ticket Agent W. B. Macdonald, issued bulletin No. 12-3 (copy of which is attached marked employees' exhibit 'A') advertising seasonal position No. 2608, stenographer-clerk, Miami Depot Ticket-Baggage Agency. This position was advertised only to employees in the Miami Depot Ticket-Baggage Agency. On December 20th, Mr. Macdonald issued bulletin No. 12-5, assigning Mr. S. S. Potter, a non-employee to the position. Copy of bulletin No. 12-5 is attached marked employees' exhibit 'B.' At the time this position was advertised only to employees in the Miami Depot Ticket-Baggage Agency, it was apparent there were no employees in that office who would make bid for same, as indicated by letter of District Superintendent P. L. Gaddis, dated December 30, 1938, copy of which is attached marked employees' Exhibit 'C'."

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 December 13, 1938, bulletin 12-3 was posted by the Stationmaster-Ticket Agent at Miami, advertising to the employees in the Miami depot ticket-baggage agency seasonal position No. 2608, stenographer-clerk, with probable duration of five months, at a rate of \$5.2737 a day. The advertising of the position was confined to employees in the Miami depot ticket-baggage agency, under Rule 7 (b), which provides that seasonal positions or vacancies, anticipated to be in existence 180 consecutive days or less, will be

'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 Miami-Ticket Baggage Agency was properly advertised in accordance with Rule 7 (b), that the other rules of the agreement cited by the employees 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 employee had suffered any wage loss, or that compensation was due any employee.

"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 and sole issue in this case is whether or not the position in question was properly bulletined. As appears in the statement of claim, the employees contend that "the Carrier violated the rules of the Clerks' Agreement . . . in failing and refusing to post bulletin advertising position of stenographer-clerk, No. 2608, Miami Passenger Agency, to the entire seniority district, when this seasonal position was advertised on December 13, 1938."

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 exception incorporated 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 employees 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.