

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

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

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of System Committee for wage losses for each working day from August 10th to September 2nd, 1939, inclusive, for Miss Laura P. Golchert on account of violation of Rules 29 and 31, Clerks' Agreement."

JOINT STATEMENT OF FACTS: "Miss Laura P. Golchert holds seniority under Clerks' Agreement in District 70-A as of June 26th, 1936. Prior to August 10, 1939 Miss Golchert was laid off in force reduction, at which time she filed her name and address in compliance with Rule 31, Clerks' Agreement.

"From August 10th to September 2nd, inclusive, Mr. Frank Hubert regular incumbent of position 240-8, rated at \$4.90 per day, requested and was permitted to be absent from duty. This position was filled by Marie Wolff who was the regular incumbent of position 45-8, rated at \$4.90 per day. Position 45-8 was filled by Mrs. Kruse who is regular incumbent of position 39-8, rated at \$4.90 per day. Position 39-8 was filled by Frances Wolff who is the regular incumbent of position 156-8, rated at \$4.45 per day. Position 156-8 was not filled during this period of time (21 working days) August 10th to September 2nd, 1939."

POSITION OF EMPLOYES: "Rules 27, 28, 29 and 31, Clerks' Agreement, effective as of January 1st, 1936, reads as follows:

'RULE 27—NOTICE OF POSITIONS ABOLISHED. Two (2) working days' advance notice will be given of all positions abolished, and such notice will be posted the same as provided in Rule 17 for bulletins.'

'RULE 28—POSITIONS ABOLISHED—EXERCISE OF SENIORITY. When positions are abolished employees affected must exercise their seniority subject to provisions of Rules 16 and 18 within five (5) working days from date position is abolished, or forfeit their seniority. Other employees when actually displaced under provisions of this rule by the employee assuming work on the assignment, must exercise seniority in the same manner, except that an employee whose position is abolished or who is displaced may indicate choice of assignment prior to position actually being abolished or the employee actually displaced, and will be permitted to assume work on the new position the day following date position is abolished or on the date actually displaced.

to position 156-8 and that the carrier was not justified in blanking this position for the reasons indicated in Railway Company's position, dated December 4th, unless and until Rule 27 had been complied with, but were required to work the position six (6) days per week in accordance with that part of Rule 29 'Assignments shall be not less than six days per week except as reduced by a specified holiday.' Employees contend and the management does not deny that Miss Golchert was available and qualified to perform the duties assigned to position 156-8 which were left vacant on dates indicated in claim. We further contend that Miss Golchert being out of service under provisions of Rule 31 should have been returned to service in accordance with her seniority, and we quote the rule again in part—"Will be returned to service in the order of their seniority for temporary or permanent vacancies."

"By failing to comply with the provisions of rules 29 and 31 the carrier violated the terms and principles of the agreement, and in support of our contention, we direct your attention to decision in Award 546, Docket CL-547, which was an identical dispute on this same property."

POSITION OF CARRIER: "As indicated in the joint statement of facts, Frank Hubert, regularly assigned to position 240-8, rate \$4.90 per day, was absent on various dates during months of August and September, 1939 of his own volition. The condition of the work warranting filling of his position, same was filled by a junior employee, viz. Marie Wolff, whose regular assignment comprised position 45-8, which position in turn was filled by Grace Kruse, regularly assigned to position 39-8, Mrs. Kruse's position also being filled by a junior, Frances Wolff, whose regular position No. 156-8, rate \$4.45 per day, was not filled during the period of her absence therefrom as the result of Hubert laying off of his own volition, for the reason the requirements of the service did not necessitate the filling of the position.

"The employees are claiming that under provisions of rule 31, clerks' agreement, it was mandatory upon the railway company to recall an employee laid off in force reduction to fill position 156-8 during period of Hubert's absence, the employees predicating their contention, at least to some degree, on Award 546 of this Division, involving claim of W. J. O'Brien, an employee of the store department.

"While the provisions of Award 546 were complied with, it was the position of the railway company at the time the case was heard before this Board, and it is still the position of the railway company that the provisions of rule 31, nor any other rule as contained in agreement between the railway company and the brotherhood, do not make it mandatory that the railway company must fill a position voluntarily vacated by the regular assignee thereof, or that the railway company fill a vacancy which may have occurred as the result of the regular assignee thereof being assigned to a higher rated position, as in this instance, as the result of the regular assignee thereof voluntarily laying off.

"It is the position of the railway company that claim of the employees as submitted to this Board is not supported by provisions of rules in agreement between the railway company and the brotherhood, and same cannot properly be sustained."

OPINION OF BOARD: The precise question here presented has been before this Board a number of times and with varying results. See a review of these awards in Award 934.

It is the contention of the claimant that the particular agreement here involved was before this Board in Award 546, and that the Opinion in that award is controlling in the instant claim. In Award 934 no mention is made of Award 546, and claimant contends, therefore, that this award still stands and should govern the disposition of the instant claim.

It should be noted that the result reached in Award 546 cannot be reconciled with the result in Award 934 unless it be upon a different wording of the two agreements involved. We have given our consideration to the two agreements, and while it appears that the language is not identical, nevertheless, we are convinced that the intention of the two agreements is the same, insofar as it relates to the obligation of the carrier to fill a position on any day the regularly assigned employee may, for reasons of his own, temporarily absent himself from work. See also Award 1216.

We are content to rest our decision of this claim upon the reasoning set forth in Award 934. It follows that to the list of awards specifically overruled in Award 934, there should be added Award 546.

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 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 no violation of the rules is shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of December, 1940.