

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James H. Wolfe, 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 the System Committee of the Brotherhood alleging violation of Rules 23, 29 and 31, Current Clerks' Agreement, account blanking of position 215-7 and position 209-7, March 8 to 19th, inclusive, and for all wage losses sustained as a result thereof."

There is in evidence an agreement between the parties bearing effective date of January 1, 1936.

EMPLOYEES' STATEMENT OF FACTS: "The regular duties of H. Sommerfield on position 215-7 are those of claim checker, Miscellaneous Department, Auditor Freight Accounts Office, Ravenswood. On March 1, 1938 he was assigned to a temporary vacancy in the Switching Department under Rule 23 and Mr. C. Voelker was assigned to H. Sommerfield's position on March 1st, up to March 8th, in accordance with Rule 23, Current Clerks' Agreement. As of March 8th the position remained blanked, Mr. Voelker having been removed and assigned to perform duties in the compilation of a special statement in the Miscellaneous department.

"The regular duties of N. Martin on position 209-7 consist of posting of interline forwarded and intermediate correction accounts. On March 8th, 1938 he was assigned to perform duties in the compilation of a special statement in the Miscellaneous Dept., his regular position remaining blanked. Applications under Rules 23 and 31 were on file by employees with the supervising officer."

POSITION OF EMPLOYEES: "There is in evidence an agreement between the parties bearing effective date of January 1st, 1936 and the following rules thereof read:

'RULE 21—INDEFINITE VACANCY. Vacancies or temporary positions of indefinite duration may be filled by appointment for a period of sixty (60) days, after which time same will be filled in accordance with provisions of Rule 17.'

'RULE 22—FILLING POSITIONS BY APPOINTMENT. Buletioned positions may be filled temporarily pending assignments. In event no bids are received from qualified employees, positions may be permanently filled by appointment.'

'New positions or vacancies known to be of sixty (60) days or less duration will be considered temporary and may be filled by appointment.'

of these duties were performed by N. Martin from March 8th to March 19th, inclusive, having been instead assigned to perform duties in the compilation of a special statement in the Miscellaneous Dept. We contend that the Carrier in fact established a new position and should have filled position 209-7 in accordance with Rules 23, 29 and 31.

"In support of the above allegations with append hereto and make a part hereof employees exhibits 1 to 3 same being correct copies of bulletins covering the positions in question.

"Rules 13 to 35 inclusive, 50, 51, 52, 53 and 64, all contemplate the existence of positions, an increase and decrease in the number of positions. In fact these rules are incapable of being applied except that it be shown positions have been maintained, increased or decreased.

"The wage agreement was based upon positions as identified by volume and character of work, as segregated and assigned in separate bureaus or subsections of offices.

"All of these rules and the wage agreement contemplate and provide that so long as duties exist, they shall be classified, rated, bulletined and performed, otherwise the establishment of seniority rights to perform and be paid for duties would be an idle act.

"The Carrier cannot by unilateral action nullify or modify these seniority rights unless and until it can show a rule affirmatively permitting a departure from assigning and paying employees in their seniority order for whatever work can be shown to exist.

"In support of the above allegation, we direct the attention of your honorable board to Award No. 546, Docket No. CL-547.

"Our claim is amply supported by Schedule Rules and we ask your honorable board to so rule."

POSITION OF CARRIER: "In consideration of the fact that neither position 215-7 nor position 209-7 in our auditor freight accounts office was 'blanked' but was filled on each working day during period March 8 to 19, 1938, there is, of course, no argument which the railway company can consistently submit in respect to contention of the employees as indicated in claim submitted to the Board."

OPINION OF BOARD: C. Voelker was assigned to a vacancy in Position 215-7 from March 1 to March 19, 1938, under Rule 23 of the Agreement. During part of this time (from March 8 to 19) he was engaged in the compilation of a special statement in the Miscellaneous Department. The duties of Position 215-7, entitled claim check, are quoting from the bulletin "checking of claims with records, knowledge of debits and credits, Agents' and A. F. A. corrections and correction accounts."

N. Martin, occupying Position 209-7, was from March 8 to 19 assigned to perform duties in the compilation of a special statement in the Miscellaneous Department. His regular duties under Position 209-7 consisted of posting interline forwarded and intermediate correction accounts.

The petitioner claims that these two positions were "blanked" from March 8 to March 19, 1938. The carrier claims they were filled each working day during the period under consideration by Voelker and Martin, that the special reports involved work ancillary to their regular positions and not the creation of new positions.

The issues are then twofold: First, the factual one of whether the compilation of these special reports was of so different a type and character from the work regularly constituting the two positions as to make it not only new, but work not reasonably appurtenant to the position as manifested

by its recognized duties. If this issue is decided against the railroad there arises another question, secondly, whether a temporary vacancy must be filled if there are men available to take on the work.

From the argument it appeared that the special reports were made up from data secured from the very records which belonged respectively to Positions 215-7 and 209-7. The incumbents of these positions are familiar with the records. It is natural that they should be called upon to make up these special reports. It is to be wondered who else than those who work daily with the records and are familiar with them could better compile such reports. For a disquisition on the tests to determine whether new work can be said to be a natural and incident part of an established position, see Award 1314, Docket CL-1336. The fact that one of these positions was occupied by a temporary incumbent during a temporary vacancy under Rule 23, pursuant to his filed request for such assignment, cannot change the result. We apply the same test to him as we would if the new work of compiling special reports had been done by the regular incumbent Sommerfield.

As stated in Award 1315, Docket CL-1349, bulletins are not intended to set out the detail of the work attendant to a position, nor all of its functions and refinements, but only a general outline of the work which the position covers sufficient to acquaint employees with the nature of the duties so that they may determine if they are qualified and desire to bid. Other duties not specifically named may be added without destroying the identity of the position provided they are reasonably appropriate to the position and type of work which it entails and natural and incidental thereto. See Award 1314, Docket CL-1336.

We think the factual question as to whether there was any "blanking" of Positions 215-7 and 209-7 must be resolved in favor of the carrier. This makes it unnecessary to discuss or decide the question as to whether, if there were a vacancy, the carrier would be required to fill it. There have been decisions both ways on this question.

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 no positions were blanked. There was 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 8th day of January, 1941.