

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

---

**PARTIES TO DISPUTE:**

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

**ERIE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** "1. Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that Mr. H. F. Watt, seniority date January 31, 1937, be reimbursed for all wage loss sustained by reason of the Carrier's failure to assign a temporary vacancy in the office of the Superintendent at Hornell, N. Y. to him as the senior employe under Rule 7 of the Clerk's Agreement dated September 1, 1936.

"2. Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that employes who should have been relieved on their assigned rest days be reimbursed for service performed on such days during the months of September and October 1939 at rate of time and one half."

**EMPLOYEES' STATEMENT OF FACTS:** "On September 11, 1939, Mr. C. A. Thompson, Assistant Chief Clerk in the Office of the Superintendent at Hornell, N. Y., reported off account of illness. Mr. E. J. Dugan, Accident Report Clerk, was assigned to fill the vacancy on the Assistant Chief Clerk's position. Mr. Donald Campbell, Relief Ticket Clerk, was assigned to fill the vacancy on the Accident Report Clerk's position. Employes who were to have been relieved by the Relief Clerk were required to work on their regular assigned rest days. Mr. Dugan's seniority date is June 11, 1923. Mr. Donald Campbell's seniority date is June 29, 1937. Mr. H. F. Watt who had also worked in the office of the Superintendent has a seniority date of January 31, 1937."

**POSITION OF EMPLOYES:** "As a result of the illness of the Ass't Chief Clerk, a temporary vacancy in the Office of the Superintendent at Hornell, N. Y. was created. This position was filled by moving up the senior employe in the office, and which in turn created a vacancy on the position of Accident Report Clerk. This position was filled by taking the regular assigned relief clerk from his position and filling the Accident Report Clerk position. In doing so, the Carrier violated the seniority rights of Mr. H. F. Watt who was senior to Mr. Campbell. Neither of these employes had ever worked the Accident Report Clerks position before, although both employes had worked for a time in the office in which the vacancies occurred. Mr. Watt was an extra clerk and had he been used in order of his seniority there would have been no violation of the rules. Mr. Campbell was used because as the Carrier states he had worked for a longer period of time in the office of the Superintendent, although it is admitted by the Carrier he did not work on the position of Accident Report Clerk.

26 days during October, and Emerson worked 22 days in September and 25 days in October as yard clerks. Accordingly, even though these two yard clerks had been qualified to perform the work in the Superintendent's office, there would have been no incentive for them to take this job.

"We believe that this claim should be denied for the following reasons:

"1. The vacancy in the Superintendent's office was of indefinite duration, and according to Rule 7 (c) of Rules and Regulations effective September 1, 1936, there was no requirement that the vacancy be advertised until the expiration of sixty (60) days.

"2. There was no obligation of the Railroad to adhere to seniority in making assignments to temporary positions or vacancies.

"3. There was no qualified employe available for relief service to relieve the three ticket clerks at Hornell, N. Y., and the regular incumbents of these positions were worked on their rest day as provided for under Rule 23 (b) of Rules and Regulations effective September 1, 1936.

"4. Had there been qualified ticket clerks available at Hornell, N. Y., we would certainly have used them in preference to applying the provisions of Rule 23 (b).

"5. The clerks who are now suggested as being available by General Chairman, namely Watt, and Emerson, were neither qualified ticket clerks, nor were they familiar with the duties of the accident clerk's job in the Superintendent's office, and during the entire period were employed at least six days per week as yard clerks."

**OPINION OF BOARD:** Item 1 of the claim requests that H. F. Watt be reimbursed for all wage loss sustained by reason of the Carrier's failure to assign a temporary vacancy in the office of Superintendent to him as the senior employe during the period of the claim, viz., September 11 to October 31, 1939, inclusive. While it apparently was unknown to the representative of the employes when this dispute was progressed to the Board, it has been developed by the record in this case that Clerk H. F. Watt did not sustain a wage loss during the period involved.

Rule 23 (b), which pertinently refers to the now disputed issue in this case, specifies procedure requiring consideration by representatives of both parties of the availability of qualified employes in providing for relief service. The record is not clear as to whether such consideration was given in connection with the relief due the six employes in the period September 11, 1939, to October 31, 1939, inclusive, when on the former date the relief clerk regularly assigned to relieve on those six positions was required to perform the duties of Accident Clerk in the Superintendent's Office at Hornell, New York.

Therefore, without commenting upon any omission by the parties in respect to the procedures in the instant case, attention is simply directed to the provisions of Rule 23 (b) and the need for action by the parties in consonance with the Rule in giving it practical application to future situations which make its consideration necessary.

**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 Employes involved in this dispute are respectively Carrier and Employes 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 action should be taken by the parties to give practical application of the provisions of Rule 23 (b) to future situations which make consideration of that Rule necessary.

AWARD

Claims 1 and 2 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 24th day of April, 1941.