

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
SYSTEM**

including

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

PANHANDLE AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier violated the rules of the Clerks' Agreement when, on May 1, 1939, it failed and refused to advertise a new position of Assistant Timekeeper, rate \$6.64 per day, established in the office of Superintendent, Temple, Texas, to employes holding seniority rights in that office; and,

Claim that said position shall now be advertised and filled from among employes of the Superintendent's office at Temple; and,

Claim that all employes involved in or affected by such violation of rules shall be fully compensated for monetary losses sustained to the extent they would have enjoyed such work had they not been deprived of it, retroactive to May 1, 1939.

EMPLOYEES' STATEMENT OF FACTS: In order that the Members of the Board may have a clear picture of just what is involved in this case, employes consider it essential to briefly outline the methods employed and experiments resorted to by the Carrier in connection with its timekeeping work in the years immediately preceding the date this controversy arose.

Prior to early 1932, time for the following general classifications of employes was kept in the 24 or 25 Division Superintendent's offices located on line: Trainmen, enginemen, yardmen, trackmen and station employes, including clerks and telegraphers. It is to be understood that each Division Superintendent's office constitutes a separate seniority district. Late in 1931, Carrier began negotiations with the organization then representing its clerical employes resulting in a series of agreements being reached under which all timekeeping for trainmen, enginemen and yardmen was transferred to the four General Offices located in Topeka, Kansas; Galveston, Texas; Amarillo, Texas and Los Angeles, California. In the case of the Division Office at Temple, this work was transferred to a newly created department and seniority district in the General Office at Galveston.

OPINION OF BOARD: The facts that gave rise to this dispute and the positions of the respective parties are sufficiently set forth so as not to require repetition here.

This claim presents an anomalous situation because of the hopeless irreconcilability of the positions of the respective parties here and that taken by them in former dockets, and it is just as difficult to attempt to reconcile former awards.

It is only fair to say that the negotiations leading up to a settlement of this and similar disputes resulting from the decentralization of the Galveston Accounting office broke down because of the employees insisting on a guarantee of job insurance as incorporated in the "Washington Agreement." We have no occasion to pass on the merits of that insistence, but we think it is safe to say that if it had not been insisted upon, a satisfactory settlement could have been made on the claim here involved.

However, that insistence does not necessarily excuse the carrier in this case. It was argued on behalf of the Carrier that the new job in the Temple office was bulletined in the Galveston seniority district strictly in accordance with our pronouncement in Award No. 198, and Anderson's transfer to Temple was proper under Sections 15 c and 16 of Article III of the current Agreement which read respectively as follows:

"15c Employees transferring with their positions from one seniority district to another may retain their position and shall retain in the district to which transferred, their seniority acquired in the district to which transferred. * * *"

"16 When for any reason two or more offices or departments are consolidated or where offices or departments are divided, employees affected shall have prior rights to corresponding positions in the consolidated or divided office or department * * *."

These rules do not apply to the situation at hand. Carrier freely admits that Anderson's job at Galveston was abolished. Rule 15 c has reference to "employees transferring with their positions." If Anderson's position was abolished, it must be certain he could not be transferred with it, and Rule 16 cannot apply because there was no "corresponding position" in Temple as the record clearly shows.

With these two rules failing as props for the Carrier's position, is it saved by reliance on Award No. 198? The record in that case shows there were scores of jobs involved, and it was, as the referee points out, impossible to identify any of the new positions as being those from outside of the Chicago Office, but says he, "The important fact remains that accounting work disappeared from certain seniority districts and reappears in an entirely separate and distinct seniority district."

We think the last quotation is the crux of Award No. 198 and constitutes the real basis for it.

The same thing is true in the case before us. The taking of the work from the Galveston seniority district and transferring it to Temple, and giving Anderson a large amount of work from the Temple seniority district where he had no seniority rights is clearly a violation of Rule 1 (a) of Article III of the Agreement.

As the statement of facts indicate only 42% of Anderson's job was moved to Temple. The rest of the work that went into the new position at Temple consisted of work which formerly had been performed in that office.

As will be noted this claim is based on the fact that the new position was not bulletined to the employees in the Temple office.

The Award in 198 was that "the carrier shall bulletin positions * * * on the several seniority districts where the work was *formerly* performed." In our case this includes Temple. Bulletining the job at Galveston was not enough even under Award No. 198.

The seniority district Rule (Award No. 99) seems too well established that further comment on it is unnecessary. See Award Nos. 198, 199, 610, 612, 718, 752, 756, 973, 975, 1611, 1612, 1642, 1685, 1711 and 1808.

Since this claim is based solely on the situation at the Temple office this award does not cover any other possible claim. If it develops that the position at Temple was bulletined when Anderson resigned to accept a position with a bank in Galveston, based on the facts in this particular case this claim will be denied.

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 the carrier violated Rule 1 (a) of Article III of the Agreement and the claim (limited exclusively to the Temple office) must be sustained unless position at Temple caused by Anderson's resignation was bulletined at Temple and for reasons stated above.

AWARD

Claim sustained conditionally as indicated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of August, 1942.