

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Mr. P. C. Carpenter be removed from position of Stenographer-Clerk in the office of Claim Agent at Columbus, Ohio; that the position be filled from the applicants holding seniority on the Hocking Division, and that all employees who have suffered wage loss by reason of the improper assignment of the said position be compensated for such wage loss retroactive to September 10, 1940.

EMPLOYEES' STATEMENT OF FACTS: On August 31, 1940, Bulletin No. 1 was issued by Mr. F. C. Amos, Claim Agent, advertising position of Stenographer-Clerk (an excepted position), the bulletin stating that bids would be received from September 3 to 7, inclusive. The assignment became effective September 10, 1940, the rate of pay being \$185.20 per month.

Bids were received by Mr. Amos from the following rank and file employees:

E. Don Rockey,	Seniority date on the Transportation Roster,	July 31, 1922
Kearns Stanton,	" " " " " "	Jan. 16, 1925
Ralps C. Pahl,	" " " " " "	May 7, 1925
E. D. Bornshine,	" " " " " "	Dec. 13, 1926
Carroll Patterson,	" " " " " "	Aug. 22, 1927
Howard V. Baker,	" " " " " "	Sept. 15, 1929
Geo. H. Pfaff, Jr.,	" " " " " "	July 24, 1940
R. H. Price,	No Seniority	

On September 10, Mr. Amos issued Addendum to Bulletin No. 1 awarding the position to Mr. P. C. Carpenter, who prior to this date was holding an excepted position in the office of Claim Agent at Peru, Indiana, located on the Chicago Division, a separate and distinct seniority district from the Hocking Division. Mr. Carpenter holds no seniority on the Hocking District.

Rule 1, Section (d), reads:

"New positions and vacancies (known to be of thirty days or more duration) coming under Sub-Section 3 of Section (b) of this rule, will be bulletined for five working days on the seniority district where the new position or vacancy exists. Bulletin of assignment will be posted for five working days in all places where the position was bulletined."

force in many departments, and one of the reasons the Carrier insisted on the language written in Rule 1 (e) was to permit the promotion of employes in such office from one excepted position to another.

It is the Carrier's position that the rules of the Agreement have been complied with, and there is no justification whatever for either contention of the employes in this case.

OPINION OF BOARD: This is a joint submission and involves the interpretation of certain rules of the current effective agreement. The facts are not in dispute.

A bulletin was issued for the position of Stenographer-Clerk in the office of the Claim Agent. Bids were received from rank and file employes on the Hocking Division where the position was located. The position was awarded to P. C. Carpenter, the holder of an excepted position on the Chicago Division. The Committee contends that the award of the position to him was a violation of the rules because each of the other bidders had a prior claim. Each had a higher seniority status and Carpenter came from a different seniority district.

The applicable rules are peculiar. They purport to apply to all clerical workers and to all others who usually come within the scope of similar agreements. Then comes the following language:

"EXCEPTIONS

"(b) Except as otherwise provided in this rule and Rule 26, this agreement shall not apply to": Then follows a list of positions which includes both the one here involved and the position which Carpenter previously held. Paragraphs d, e and f under this heading of EXCEPTIONS read as follows:

"(d) New positions and vacancies (known to be of thirty days or more duration) coming under Sub-section 3 of Section (b) of this rule, will be bulletined for 5 working days on the seniority district where the new position or vacancy exists. Bulletin of assignment will be posted for 5 working days in all places where the position was bulletined. Bulletin notices abolishing positions will be posted to employes affected as information.

"(e) In making appointments to excepted positions covered by Sub-section 3 of Section (b) of this rule, it is the intent to give employes covered by this agreement preference over employes covered by other agreements and over non-employees.

"(f) Employes from rank and file now filling or hereafter promoted to official, subordinate official, road service or excepted positions shall retain and continue to accumulate seniority on the roster from which promoted. Employes returning to rank and file positions in case of demotion, disqualification or abolition of position must, within 10 working days (General Office and Accounting Department, Huntington Division, 5 working days) from date last worked on such position, return to seniority roster from which promoted."

The Committee contends that it is the intent of Section (d) that the positions not only must be bulletined on the seniority district where the vacant position exists but must be awarded to an employe holding seniority on that district in preference to one on another seniority roster.

Secondly it is claimed that Section (e) requires that in making appointments to excepted positions preference must be given to employes covered by the agreement in preference to all others, and that this means rank and file employes, a status not held by Carpenter.

As to the first point we have but little doubt. The position involved is specifically excepted from the rules of the agreement, except in so far as may be otherwise specifically provided. The only exceptions are (1) that the vacancy for such position must be bulletined as provided in Section (d), and (2) that the employe holding this excepted position must be kept on a seniority roster as provided in Rule 26. To hold that the excepted position must be offered first to those on the seniority roster of the district where the vacancy exists is to read into the rule something which is not there. The position was bulletined as prescribed by the rule and that was all that was required.

To determine the purpose of Section (e) is a much more difficult problem. It is argued that Carpenter, holding an excepted position, is not covered by the agreement which applies only to rank and file employes, and that there is no way in which he can return to the rank and file except in accordance with the provisions of Section (f), which had not become applicable, or by mutual agreement which had never taken place. We do not think, however, that either the letter or the spirit of Section (e) requires this construction. Preference is given only over employes covered by other agreements and over non-employes. Carpenter is not covered by another agreement and he is not a non-employee. As a matter of fact he is covered by this agreement in a limited way and for the purpose of the application of Section (e) might be held covered. Unless the language unequivocally bars him from being awarded another excepted position, we do not think it should be so interpreted. For we do not believe that the parties ever intended the very awkward consequences which, as the Carrier points out, would follow if the holder of one excepted position is to be barred from being awarded another.

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 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 5th day of April, 1943.