

Award No. 2263

Docket No. CL-2249

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

(Guy A. Thompson, Trustee)

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When on May 22d, 1942, it failed and refused to release Clerk H. L. Craven from the position of clerk at Alexandria, La., rate \$6.29 per day, hours of assignment 6:00 P.M. to 11:00 P.M., which position he was regularly occupying when he was on May 22d, 1942, per Superintendent's bulletin No. 17, dated May 22d, 1942, assigned to position of "Inside Yard Clerk" at Monroe, La., rate \$5.84 per day, hours 4:00 P.M. to 12:00 Midnight, and continued to refuse to release Mr. Craven at Alexandria, La. until August 4th, 1942, (including May 22d and August 4th)—seventy-five (75) days, after he had been assigned to the position at Monroe, La. on the basis of his seniority rights.
2. That Clerk, H. L. Craven be reimbursed for the difference in expense incurred incident to living and working at Alexandria, La. over and above what would have been incurred at Monroe, La. for the period May 22d, 1942 until the date released when he was permitted to go to his regular assigned job at Monroe, La. on August 4th, 1942, amounting to \$87.00:

Period	Point	Item	Cost	Difference in Expense as Compared to Monroe	
May 22d	to Alexandria, La.	Rent	\$35.00	\$12.00	
June 22d		Groceries	\$45.00	\$35.00	
		Transportation	\$ 3.00	none	
			\$83.00	\$47.00	\$36.00
June 22d	to Alexandria, La.	Rent	\$35.00	\$12.00	
July 22d		Groceries	\$45.00	\$35.00	
		Transportation	\$ 3.00	none	
			\$83.00	\$47.00	\$36.00
July 22d Aug. 4th	to Alexandria, La.	Based upon figures shown above for fourteen days period.			\$15.00
Total.....					\$87.00

"An employe awarded a bulletined position will be transferred promptly to such assignment after issuance of bulletin, and unless assigned within the assignment period as provided in the rules will be paid for wage loss suffered."

All matters growing out of the employes' request of February, 1940 have not yet been composed. However, even in this presentation of the employes' request for a revision of the August, 1926 agreement they did not request that employes awarded bulletined positions and who are not assigned (actually placed) within the time limits provided for in the rules that they would be reimbursed for any differences that may be involved in living expenses. All they asked for was that they would be paid for wage loss suffered. There was no wage loss suffered in this case. The rate of pay attached to Mr. Craven's position at Alexandria was \$6.29 per day, whereas rate of pay attached to position at Monroe was \$5.84 per day or \$0.45 per day less than the Alexandria position.

The Management feels that the employes' contentions should properly be denied, there being no rule to support such a claim.

**OPINION OF BOARD:** This docket presents the claim of H. L. Craven for alleged monetary loss sustained by him by reason of his having been retained on a position as clerk at Alexandria, La., for a period of 75 days after he had been assigned, pursuant to his bid, on a bulletined position at Monroe, La. The position at Alexandria was rated at \$6.29 per day; the position at Monroe \$5.84, a difference of 45 cents per day. The monetary loss claimed represented the difference in living costs for the period between the two stations.

The employes base this claim chiefly on Rule 10. Paragraph (a) of the rule provides for the bulletining of vacancies and new positions for bids. Paragraph (b) of the rule provides as follows:

"Employes desiring any such positions will file their applications with the designated official within five (5) days and an assignment will be made within five (5) days thereafter. The name of the successful applicant will immediately thereafter be posted for a period of five (5) days where the position was bulletined."

The employes insist that the clause, "an assignment will be made within five (5) days thereafter," means that the successful employe will be transferred to the new position immediately upon assignment. It seems clear that the "assignment" and transfer are two separate steps which the Carrier takes. It first bulletins the fact that the employe is assigned to the new position and then "transfers" him to the new position or releases him from the old position.

It is true that the rules provide no specific time for the second step, the "transfer." But without the "transfer" the "assignment" is a meaningless formality. If the Carrier may with impunity delay in making the transfer of the employe after he is assigned, it may deny him his seniority rights indefinitely. The entire system of bulletining positions and assigning employes according to seniority rights must have been set up in the Agreement on the understanding of the parties that the assigned employe would be transferred promptly to the new position. We are confirmed in this opinion by the statement of the Carrier in its submission that, "Under ordinary conditions the employe selected from the list of applicants for a vacancy is transferred to the position sought within five (5) days following date of receipt of bids."

Further confirmation of this construction of Rule 10 (b) is found in Rule 9, which provides that when an employe is awarded a permanent position on his bid, "his former position will be declared vacant and bulletined," not at some future date, but when the new position is awarded to him, when he is assigned.

In Award No. 2174 we said: "We think assignment to a position, in contemplation of Rule 10, does not carry with it the right to **immediate transfer** to it. However, this does not leave the time of transfer to the caprice of the Carrier. The transfer must be made within a reasonable time. What is a reasonable time must be determined from the facts and circumstances of the particular case." Under the facts and circumstances of that particular case it was felt that the Carrier had transferred the employe to the new position "**as soon as was reasonably possible.**"

We do not feel that the Carrier has made such a showing in this case. The Carrier in its submission states that: "during recent months the lack of experienced clerical help account wartime conditions, **it is not always possible** to follow the practice that was in vogue in normal times under the rules when help, generally speaking, was readily available \* \* \*." The Carrier, neither in its submission nor in its answers to the employes' statements, makes any direct allegation as to the particular cause for the delay in this case, although the Chief Personnel Officer in his letter dated December 10, 1942, stated that the transfer was not made because there was no available competent labor. The record shows no attempt on the part of the Carrier to fill the position at Alexandria. It did not even declare the position vacant and bulletin it pursuant to Rule 9.

When the employes show any such delay in making the transfer, as is shown in this case, surely the burden should be on the Carrier to show that the transfer was made "**as soon as was reasonably possible.**"

Nor can we agree with the contention of the Carrier that the employe in such a case is without any right of redress because, "The rule does not impose a penalty of any description whatever in event the applicant is not transferred" as soon as was reasonably possible.

The Agreement is the solemn contract of the parties resulting from their negotiations, governing the hours and working conditions of the employes covered thereby. Where an employe sustains a loss by reason of a violation of the Agreement by the Carrier, he must be compensated for such loss, even though no specific penalty is imposed by the rule violated. Where no specific penalty is named, the employe must be made whole. See Award No. 1324, Award No. 1711 and Interpretation No. 1 to Award No. 1711.

The employes contend that Rule 62 provides a principle which by implication furnishes a basis for computing the amount to which the claimant here is entitled. With this we cannot agree. The claimant here is only claiming the net loss sustained by reason of the difference in living costs between the two stations. We think the claimant is correct in only claiming his net loss and not claiming living expenses while held at Alexandria in violation of the Agreement.

In computing the net loss, the claimant should have allowed credit for the difference in rate between the two stations. The employes insist that this would amount to lowering the rate for the position at Alexandria. We are only making the claimant whole for his monetary loss in being held at Alexandria.

**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 employe involved in this dispute are respectively carrier and employe 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 the Agreement as claimed.

AWARD

The claim is sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 10th day of August, 1943.

DISSENT TO AWARD 2263, DOCKET CL-2249

This Opinion recognizes the correct and sound interpretation of Rule 10 (b), set forth in Award 2174, and after quoting therefrom, states:

"Under the facts and circumstances of that particular case it was felt that the Carrier had transferred the employe to the new position as soon as was reasonably possible."

In support of the conclusion here reached, the Opinion states:

"We do not feel that the Carrier has made such a showing in this case."

and also:

"The record shows no attempt on the part of the Carrier to fill the position at Alexandria. It did not even declare the position vacant and bulletin it pursuant to Rule 9."

The record shows the individual and his representative were informed of the extreme shortage of help and that Craven would be relieved as quickly as possible. There is no support for the declaratory statement that the Carrier made no attempt to fill the position. Likewise no support for the statement that the Carrier did not declare the position vacant and bulletin it pursuant to Rule 9. No charge of such failure is contained in the record nor any evidence that it was not bulletined.

The sustaining of net loss in living expenses by reason of the difference in living costs between the two stations, is not justified by any provision of the existing agreement. The record is conclusive as to the unsuccessful effort of the Employes to negotiate an addition to this particular rule requiring payment only of wage loss, which was declined by the Carrier. There is no provision in the agreement, under circumstances of this case, for payment of living expenses. Monetary loss must be held to include only losses arising out of the relationship of the employer and the employe. To allow living expenses this Board would be drawn far afield and into the question of what is or is not reasonable living expenses. That is not a function of this Board and it has no power to allow this claim for want of any rule specifically covering it.

/s/ A. H. Jones  
/s/ R. H. Allison  
/s/ R. F. Ray  
/s/ C. P. Dugan  
/s/ C. C. Cook