

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

UNION RAILWAY COMPANY

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

1. When on August 20th, 1942, it awarded the position of Bridge Company accountant and tonnage clerk, rate \$190.00 per month, to J. F. Pybus who did not come under the agreement and failed and refused to award the position to an employee, namely Mr. T. E. Farrell, who does come under the agreement and who is qualified for and entitled to the position and who filed application for same.
2. That Clerk Thomas E. Farrell shall be awarded the position which he sought and
3. Shall be reimbursed for wage loss suffered to the extent of difference in the amount of \$190.00 per month and \$7.14 per day or \$182.07 per month, equalling \$7.93 per month, retro-active to August 20th, 1942.

EMPLOYEES' STATEMENT OF FACTS: On August 14th, 1942, Auditor, Mr. C. T. Pennebaker, of the Union Railway issued a notice, copy submitted and designated as Exhibit "A," addressed to Superintendent W. Wicker, Master Mechanic R. Smith, Agent G. F. Painter and Resident Engineer K. G. Williams advising among other things that Mr. C. A. Ledsinger, Clerk handling Bridge Company tonnage revenue and other Bridge accounting work, rate \$190.00 per month had been called to the Army service and that a vacancy would exist on the position within a few days and further said:

"If anyone in your respective departments desires to apply for this position, we will be glad to consider such applications, providing they are received addressed to me not later than August 19th."

On August 11th, 1942, prior to the issuance of Mr. Pennebaker's letter of August 14th, Clerk W. L. Crittendon listed upon the Clerks' Union Railway seniority roster with a date of November 11, 1927, having received information indirectly that the position of Bridge Accountant was to soon be vacant wrote President, Mr. Dozier, copy submitted and designated as Exhibit "B," and said:

2. It completely followed the agreed practice as outlined in Mr. Roll's letter of October 5, 1941, in filling this position as well as in anything that might be covered by Rule 14.

Therefore, the claim of the Clerks' Organization should be denied in full.

OPINION OF BOARD: This case involves the filling of a vacancy in position of tonnage clerk-accountant, an excepted position under Rule 1 of the Clerks' Agreement. The Carrier assigned J. F. Pybus to the position, an employe having dormant seniority rights under the Clerks' Agreement. The Clerks' Organization contends that the position should have been awarded to T. E. Farrell, a clerk with seniority dating from October 12, 1920 under the Clerks' Agreement. The claim is grounded on Rule 14 of the Clerks' Agreement and an agreed to interpretation of the Rule made on October 5th, 1941.

The meaning of Rule 14 of the Clerks' Agreement and the agreed to interpretation thereof is set out and applied to a similar situation in Award 2350, docket CL-2310, decided herewith. The opinion in that Award is in all respects controlling in the present case. An examination of the record concerning the qualifications of the applicants leads us to the same conclusions. We necessarily find that the record will not sustain an affirmative award.

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 Rule 14 of the Clerks' Agreement and its agreed to interpretation of October 5th, 1941, established by the record.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of October, 1943.