

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, SAINT PAUL, MINNEAPOLIS AND OMAHA
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) The Carrier violated agreement rules when it failed and refused to permit C. W. Loken, Storehelper, Rate 66¢ per hour, Minneapolis, Minnesota, to work his assigned position from August 23rd to September 13th, 1943, both dates inclusive, a total of nineteen working days including one holiday for which penalty rate shall be allowed, and

(2) The Carrier shall now be required to reimburse Storehelper Loken for such time held out of service, amount \$102.96.

EMPLOYEES' STATEMENT OF FACTS: Local Storekeeper, Minneapolis Store, under date of August 2nd, 1943, advertised for bids a vacancy on Class 2 position of Storehelper, rate 66¢ per hour.

No bids were received from assigned employees in the seniority district in which said vacancy existed, and there were no furloughed employees that would have the right to bid for and be assigned to same.

C. W. Loken, Clerk, Desk 99, Rate \$5.60 per day, Assistant Auditor Disbursements Seniority District in General Office, St. Paul, bid for and was assigned to this vacancy under date of August 6th.

CARRIER'S STATEMENT OF FACTS: Local Storekeeper, Minneapolis Store, under date of August 2nd, 1943, advertised for bids a vacancy on Class 2 position of Storehelper, rate 66¢ per hour.

No bids were received from assigned employees in the seniority district in which said vacancy existed, and there were no furloughed employees that would have the right to bid for and be assigned to same.

C. W. Loken, Clerk, Desk 99, rate \$5.60 per day, Assistant Auditor Disbursements Seniority District in General Office, St. Paul, bid for this vacancy under date of August 3rd, 1943.

POSITION OF EMPLOYES: Agreement between the parties dated and effective July 16th, 1928, contains the following rules:

"Rule 15. When reducing forces the particular positions to be dispensed with will be abolished, and the employees holding such positions will be permitted, if request is made within seven (7) days, to dis-

ing in this rule, or any other rule, that requires the carrier to assign such an employe to a position on which he holds no seniority at the time he makes application for same, or at any other time, except that his application is to be given preference over non-employees; and it cannot consistently be held in this case that Loken's application was not given preference over non-employees by Store Department Officers as no one was employed on the position in question during the period covered by this claim.

In any event and regardless of the application of Rule No. 18, or any other rule of the clerks' agreement, the fact remains that Loken resigned from position in the Accounting Department and lost any seniority status theretofore earned, and any subsequent employment with the railway company would be on the basis of a new employe, on which basis Loken was employed in the Store Department, September 14, 1943.

OPINION OF BOARD: The claim recites, but the carrier denies, that the claimant was assigned to the position of Storehelper at Minneapolis from August 23 to September 13, 1943.

The only evidence bearing upon the issue was the following statement, offered by the petitioner at the hearing held on March 15, 1944:

"Local Storekeeper, S. J. Gamble, Minneapolis, telephoned Clerk Loken on August 6th, 1943 that he had advice from Division Storekeeper, Mr. J. P. Kimmel, of St. Paul, that Loken's bid was accepted and his assignment made, but Loken was denied copy of such bulletin by Store keeper Gamble when he was refused employment on August 23rd, 1943."

The above, consisting merely of statements purportedly conveyed to the claimant by telephone from the Division Storekeeper at St. Paul, through the Local Storekeeper at Minneapolis, does not tend to establish that an assignment was made. The petitioner has failed to discharge the burden which it assumed. Under the circumstances, it is unnecessary for us to give any consideration to the interpretation of the rules.

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 no violation of the Agreement has been shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1944.