

**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**

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN  
RAILROAD CO., SAN ANTONIO, UVALDE & GULF RAIL-  
ROAD CO., SUGARLAND RAILWAY COMPANY, ASHER-  
TON & GULF RAILWAY COMPANY**

**(GUY A. THOMPSON, TRUSTEE)**

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

(a) Paul L. Young forfeited his seniority when he failed to report for duty at the expiration of his leave of absence on November 11, 1942; also

(b) The Carrier violated the Clerks' Agreement when it permitted Mr. Young to return to service on December 13, 1944, displacing W. J. Morgan on position of Special Traveling Accountant; also

(c) The Carrier violated the Clerks' Agreement when it failed and refused to bulletin position of Special Accountant which was created on December 13, 1944; also

(d) Claim that Carrier be required to correct the Agreement violation and that Mary E. Rust and Mildred A. Warhol who are involved in, or affected by, the Carrier's violation of the Clerks' Agreement, be compensated for all losses sustained.

**EMPLOYEES' STATEMENT OF FACTS:** On August 10, 1942, and for some time prior thereto, Paul L. Young held the position of Special Traveling Accountant. His seniority date was November 11, 1928.

On August 10, 1942, the General Manager, Mr. A. B. Kelly, granted Mr. Young leave of absence for ninety (90) days to be effective August 11, 1942, in order that he might accept position of Statistician in the Office of Defense Transportation in Washington, D.C.

Mr. Young's leave of absence expired November 11, 1942, and additional leave of absence has not been granted to him since that time.

5. Conceding that the new position of Special Accountant created December 13, 1944, should have been bulletined, had it been bulletined the net result would have been the same as it is today.

6. Aside from the fact that the claims as now presented in favor of Mary Rust and Mildred Warhol have never been handled with the Carrier and presented to the National Railroad Adjustment Board in accordance with the Railway Labor Act, those claims are not only theoretical but without basis in fact.

Therefore, it is the position of the Carrier that the contention of the Employees should be dismissed and the alleged claim accordingly declined.

**OPINION OF BOARD:** On August 10, 1942, one Paul L. Young occupied the position of Special Traveling Accountant. He was on that date granted a 90-day leave of absence in order that he might accept a position with the Office of Defense Transportation in Washington, D.C. The leave of absence expired November 11, 1942 and no additional leave was granted. The position was properly bulletined and assigned to W. J. Morgan.

The record shows that Young's name did not appear on the seniority rosters for 1943, 1944 and 1945. It also shows that the Carrier requested the General Chairman to give approval to an extension of Young's leave which request was refused. In August, 1944 the Carrier requested the General Chairman to consent to the reinstatement of Young's seniority which request was also declined. The Carrier on December 13, 1944, displaced Morgan with Young without the approval of the General Chairman. Morgan was assigned to a newly created position with the same rate of pay. The latter position was not bulletined.

The Organization contends that Young lost his seniority when he failed to report for duty at the expiration of his leave and that the Carrier violated the current Agreement when it reinstated him without the approval of the General Chairman. It also contends the Agreement was violated when Morgan was assigned to the newly created position without advertising it as required by the rules.

The controlling provisions of the Agreement bearing upon this dispute are:

"Except for physical disability or as provided in Rule 36, leave of absence in excess of ninety (90) days in any twelve month period shall not be granted unless by agreement between the management and the General Chairman." Rule 35 (b).

"An employee who fails to report for duty at the expiration of leave of absence will forfeit his seniority rights, except when failure to report on time is the result of unavoidable delay, in which case the leave will be extended to include such delay." Rule 35 (c)

"Leave of absence will be granted to employees on request, when they can be spared." Rule 35 (d).

"All new positions and vacancies will be bulletined within three (3) days after being created or becoming vacant. . . ." Rule 9 (a)

It will be readily observed from an examination of Rule 35 (b) that the Carrier was powerless under the Agreement to grant an extension in excess of 90 days without the approval of the General Chairman. It is just as evident that by failing to report for duty at the expiration of his 90-day leave of absence, Young lost his seniority rights. This being true, the Carrier violated the Agreement when it purported to restore his seniority and assigned him to his old position.

The Carrier points out that as Young could be spared from his position, the Carrier could properly extend his leave under Rule 35 (d). It is a cardinal rule of contract interpretation that every clause in an agreement must be

given effect, if possible, and that each part of an agreement will be construed so as to give meaning to each and every part of it whenever it is possible to do so. Meaning can be given to Rule 35 (d) without destroying the meaning of Rule 35 (b) by construing it to be applicable only to leaves of absence of 90 days or less which the Carrier may grant under Rule 35 (b) without the concurrence of the General Chairman. This, we believe, is the meaning that must be given the rule.

The newly created position of Special Accountant to which Morgan was assigned is required to be bulletined under Rule 9 (a). The failure of the Carrier to bulletin this position constitutes a violation of the Agreement.

The Carrier urges that the position of Special Accountant was created for the special benefit of Morgan and that if Young had not been restored his seniority and assigned to his former position of Special Traveling Accountant, it would not have been created at all. We cannot assume that the Carrier would create a sinecure for any employe. We must assume that any position created was necessary and had duties to perform that warranted its establishment. We are of the opinion, therefore, that Carrier is required to compensate for losses sustained by employes deprived of promotion which resulted from the Agreement violations. An affirmative award is required.

**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 Agreement was violated as charged.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) H. A. Johnson,  
Secretary

Dated at Chicago, Illinois, this 23rd day of July, 1946.