

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that Frank James, Bill and Interchange Clerk, Sacramento, California, was entitled to and should have been assigned to position of General Clerk, rate \$6.87 per day in Superintendent's Office in Sacramento on April 8, 1942 and that James be compensated for wage loss sustained account of failure of the Railroad to assign him to this position and properly classify the same.

EMPLOYEES' STATEMENT OF FACTS: For many years prior to its abolishment in 1932, one position of General Clerk was in existence in Superintendent's Office in Sacramento. This position was re-established in latter part of 1941, J. R. Rossi being assigned to the same. Employees Exhibit "A" is statement of duties assigned this position.

Through Western Division Clerks' Circular No. 45-42 of April 2, 1942, position of General Clerk, Superintendent's Office, rate \$6.87 per day, was advertised for bids. The duties were described as follows:

"Duties consists of assisting with various Superintendent office reports. Applicant must be able to operate typewriter and calculating machine."

The rate of pay was the same as that of the position of General Clerk and the summarized description of duties fitted the full description contained in Employees Exhibit "A". Inasmuch as the circular described the position as carrying the same rate of pay and same duties as the position previously in existence, and not desiring the same, Frank James did not make application for the position within the specified time limit.

Subsequent to the hour for closing of bids on April 8, 1942, James learned that no qualified bids had been received and, upon further inquiry, developed that this was an entirely new position, the duties of which would consist of performing work in connection with accounting features and requiring an employe familiar with completion reports and accounting. Having had the qualifying experience, and desiring to learn more of this type of work, James made application for this position through his letter of April 8, 1942, copy of which is referred to as Employees Exhibit "B". This application was placed by James in regular mail box in Superintendent's office at completion of his tour of duty at 11:00 P. M., April 8th.

its rights in hiring a man for the job, and once the offer had been made and accepted, it was obligated to put the man on the job. Undoubtedly, if James had let the Chief Clerk know that he wanted the job before the offer had been made to the man in Oil City, James would have been assigned, but the Chief Clerk knew nothing of James' desire for the position until April 13, when, as stated, the new employe had arrived in Sacramento.

James' application of April 8 apparently went astray, because it was finally received in the Superintendent's office on July 10, 1942 (three months later) in an envelope containing mail from the Section Foreman at Kingdon, California. Thorough investigation failed to develop how James' letter went astray.

Carrier contends that James had ample opportunity to bid on the position of General Clerk before the close of Circular No. 45-42 and that the failure to secure the position was his sole responsibility and there is no justification for any penalty against the Carrier.

OPINION OF BOARD: On April 2, 1942 Carrier bulletined a new position of General Clerk, Superintendent's Office, Sacramento, bids to be received up to 8:00 A. M., April 8. The time limit was in accordance with the rule. Receiving no bids within the appointed time, Carrier on April 8 offered the position to a former employe who accepted it on the same day and agreed to report at Sacramento on April 13, which he did. He commenced work on April 14.

Claimant, upon learning no bids had been made, on April 8, but after the time for bids had expired, submitted his bid by letter which went astray. The first Carrier knew of claimant's desire for the position was when he made inquiry in person on April 13. Then on April 14 claimant submitted an application in writing for the position which was declined by Carrier on the ground the position was already filled. Carrier states that undoubtedly claimant would have been given the position had it known of claimant's wishes before the position had been given another.

The time limit on bids is established by the agreement. But claimant's position, as we interpret it, is that the time limit is not controlling in this case because the person given the position was an outsider over whom, of course, claimant had seniority. Since the outsider did not actually occupy the position until April 14, claimant feels he is entitled to it by virtue of his request on April 13. We note, however, in this connection that the position was both offered to and accepted by the outsider on April 8.

It goes without saying that those under the agreement are the first entitled to promotion and to new positions, and their seniority must be recognized. But for fairness to all and for orderly administration these rights should be exercised in accordance with the rules. We find no exception to the application of the rule that bids shall be submitted within five days. When claimant failed to submit a timely bid his then contractual priority right to that position ended.

The fact that as a regular employe claimant might have been assigned to fill the position temporarily, does not absolve him from observing the rule if he wished the position permanently.

Claimant's contention that the position was misdescribed both as to duties and title which caused him to delay bidding on it is not sustained, so we find, by the facts in the record.

We conclude that under the agreement the claim must be denied.

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 Carrier did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of March, 1947.