

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that Norman Vaughan was a qualified bidder and should have been assigned to position of Chief Clerk, Wendover, Utah, which position was advertised for bids through Eastern Division Clerks' Circular No. 470 of February 17, 1943 and that Vaughan shall be compensated for all monetary loss sustained by reason of failure of the Railroad to assign him to this position.

EMPLOYEES' STATEMENT OF FACTS: Through Eastern Division Clerks' Circular No. 470 of February 17, 1943, which is referred to as Employee's Exhibit "A" position of Chief Clerk, Wendover Station, was advertised for bids. Norman Vaughan, seniority date December 10, 1941, made application for this position. Receipt of bids for this new position closed at 8:00 A. M. February 23, 1943.

Subsequent to closing time for receipt of bids, Superintendent Duggan requested Vaughan to withdraw his bid, as indicated by copy of wire referred to as Employee's Exhibit "B". Vaughan did not choose to withdraw his bid. Through Clerks' Circular No. 472 of February 25, 1943, Superintendent issued cancellation of that portion of Clerk's Circular No. 470 calling for bids for Chief Clerk, Wendover Station.

On February 27, 1943 position of Assistant Agent was created at Wendover Station. Positions of Assistant Agent were "excepted" positions.

POSITION OF EMPLOYEES: The following rules are cited from agreement bearing effective date of October 1, 1930.

"Rule 2. These rules shall not apply to shop or roundhouse laborers; or to coal chute operators; or to laborers on coal and ore docks; or to laborers on elevators, piers, wharves, or other waterfront facilities not a part of the regular freight station forces; or to individuals where amounts of less than fifty dollars (\$50) per month are paid for special services which take only a portion of their time from outside employment or business; or to individuals performing personal service not a part of the duty of the carrier; or to employees assigned to road service where special training and experience are necessary.

"Vacancies or new positions known to be of more than thirty days' duration shall be posted and filled in accordance with these rules."

Clerks Circular No. 470 issued by Carrier's Superintendent at Elko on February 17, 1943, contained the following:

"Bids will be received in this office until 8:00 A. M., February 23, 1943, for the following position:

Chief Clerk
Wendover Station

Hours 8:00 A. M. to 5:00 P. M.
One hour meal period
Six days assignment
Rate of pay \$7.85 per day

Qualifications: Must have thorough knowledge of general freight office work and have ability to handle help.

**POST THIS CIRCULAR IN A PLACE ACCESSIBLE TO ALL
CONCERNED**

In placing bids show the following information:

1. Your name.
2. Seniority date.
3. Title and hours of regular assigned position.
4. Experience had in line of work for which bidding."

Norman A. Vaughan, with seniority date of December 10, 1941, who was then holding position of Warehouseman at Gerlach, Nevada, submitted bid for the position. Prior to entering Carrier's service on December 10, 1941, Vaughan had no previous Railroad experience, and until he bid for the position of Chief Clerk at Wendover, his experience had consisted entirely of a warehouseman's duties. The Traveling Auditor who checked all of the stations on the Eastern Division, including those at which Vaughan worked, was more intimately familiar with the qualifications of employees in station service than any other individual, and he stated that Vaughan was not qualified to perform the duties of Chief Clerk at Wendover. It is therefore certain that Vaughan would not have been assigned to the position of Chief Clerk even if the Circular No. 470 had not been cancelled.

Under date of February 25, 1943, Carrier's Superintendent issued Clerks' Circular 472 addressed to all concerned, reading:

"Cancel that part of Clerks' Circular No. 470, calling for bids for Chief Clerk, Wendover Station."

Inasmuch as this notice was posted in less than ten days from the date of Circular No. 470, Carrier contends that all concerned were properly notified of the fact that the position of Chief Clerk at Wendover Station was annulled, and that the position was not actually created; therefore, it was not obligated to make assignment of Vaughan or any other employee to such a position.

OPINION OF BOARD: On February 17, 1943, Carrier advertised for bids for the new position of Chief Clerk, Wendover Station. Receipt of bids closed February 23rd. Claimant was the successful bidder. On the date bids closed, February 23rd, Carrier wired Claimant: "Account inexperience and being subject to Selective Service, we desire you to withdraw your bid on position of Chief Clerk, Wendover Station. Will you do so? Reply by wire." Claimant declined to withdraw his bid. Thereafter on February 25th Carrier issued a circular cancelling that portion of its previous circular calling for bids on the position in question. On February 27th Carrier created the position of Assistant Agent at Wendover Station, an excepted position.

Claimant relying chiefly on Rule 6, asserts that Carrier created the position of Assistant Agent and cancelled the newly established position of Chief Clerk "for the purpose or with the effect" of evading the application of the rules.

Carrier's position, as we understand it, is that the new position of Chief Clerk was never established because no one had been assigned to it, and since Carrier had ten days from the date of the original notice within which to make the assignment, it had the same time within which to cancel the new position. We cannot agree. This theory carried to its conclusion would give Carrier the arbitrary veto power over assigning a successful qualified bidder to the position and thereby destroy seniority rights.

The effect of Carrier's action resulted in an evasion of the rules of the agreement, regardless of its motive or purpose, in violation thereof. Compare Award 3396.

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 Employees involved in this dispute are respectively carrier and employees 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 violated the Agreement as contended by Petitioner.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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