

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

1. That Carrier violated Rule 18 and other related rules of Agreement effective June 1, 1946, by the omission of certain information required by rules of said agreement in the bulletining of a newly created position of Chauffeur at Brainerd Store to operate a new International Truck placed in service on or about November 7, 1947.
2. That Carrier violated rules of Agreement dated June 1, 1946, by denial of senior employee's application, Mr. E. C. Olson, to a position of Chauffeur to operate the International Truck placed in service on November 7, 1947.
3. That claimant, Mr. Olson, be compensated for all wage losses sustained arising out of Carrier's denial of his application for position of Chauffeur operating International Truck, from November 7, 1947, to date claimant is assigned to the position in conformity with rules of the Agreement.

EMPLOYEES' STATEMENT OF FACT: On or about November 7, 1947, the Carrier placed in service at its Brainerd Store a new International Truck. The truck is stationed at the Carrier's Lumber Yard, Stores Department, Brainerd, Minnesota, and is used to transport lumber and other materials to line points within trucking distance of Brainerd. The truck is operated over state highways, hence, the operator (chauffeur) thereof is required to be a licensed (state) chauffeur.

Chauffeurs of the Carrier in the Stores Department are a group of employees coming within Rule 1—Scope—of our Agreement with the Carrier effective June 1, 1946. They are defined within Group 3 of Rule 1.

On December 8, 1947, Management issued Clerk's Vacancy Notice No. 3283 for position of Chauffeur. (Employees' Exhibit 1)

To the best of our knowledge three employees applied for the vacancy advertised by Bulletin No. 3283.

E. C. Olson—Seniority date July 6, 1936—then occupying position of Chauffeur operating a Yale Boom Life Machine.

There is, therefore, no basis for the Employees' claim that bulletin No. 3283 was issued in violation of Rule 18 (a).

With regard to the second phase of the claim submitted to this Division, namely:

"2. That Carrier violated Rules of Agreement dated June 1, 1946 by denial of senior employee's application, Mr. E. C. Olson, to a position of chauffeur to operate the International truck placed in service on November 7, 1947."

The Carrier has shown that when Mr. Olson made application for the position of chauffeur covered by vacancy notice No. 3283, he was then and had been for some time previous, occupying a position of chauffeur. As Mr. Olson occupied a position of chauffeur in the Brainerd Store Department and as vacancy notice No. 3283 covered a position of chauffeur in the Brainerd Store Department, Mr. Olson could not consistently be assigned to the position covered by vacancy notice No. 3283. Therefore, Mr. Olson was not denied a position of chauffeur.

With regard to the third phase of the claim presented to this Division by the Employees, namely:

"3. That claimant, Mr. Olson, be compensated for all wage losses sustained arising out of Carrier's denial of his application for position of chauffeur operating International truck, from November 7, 1947, to date claimant is assigned to the position in conformity with rules of the Agreement."

Here is a claim for a loss of earnings in behalf of Mr. Olson. Mr. Olson occupies a position of chauffeur and that position and the position of chauffeur covered by vacancy notice No. 3283 are paid the same rates of pay. Therefore, Mr. Olson did not sustain any loss in earnings by reason of not having been assigned to the position of chauffeur covered by vacancy notice No. 3283. However, in any view of this case the claim for loss of earnings cannot now be considered. No such claim has heretofore been presented or appealed on the property and neither has such a claim been considered in conference with representatives of the Employees. In this connection attention is directed to Rule 55 (f) of the Clerks' Agreement effective June 1, 1946 reading:

"(f) An employee who considers himself otherwise unjustly treated shall have the right of hearing and appeal as provided in this Rule 55 if written request is made to his immediate superior within ten (10) calendar days of cause for complaint."

As no claim for compensation has been presented or appealed on the property, this claim for compensation cannot now be considered.

The Carrier has shown that an uncontested practice of many years standing has existed in bulletining vacancies and new positions of chauffeur in the Store Department and that this uncontested practice consisted of bulletining such vacancies and new positions without designating the types of machines to be operated by occupants of positions of chauffeur. Employees assigned to positions of chauffeur have not been limited to the operation of specific machines but have been used to operate machines necessitating their services. There is, therefore, no basis for the claim covered by this docket and it should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: On December 8, 1947, the Carrier issued its Bulletin No. 3283 advertising a vacancy of Chauffeur at Brainerd Store. It is the claim of the Employees that the bulletin omitted certain information required by Rule 18 (Bulletin Rule) in that the bulletin did not carry a description of the principal duties of the position which duties the Employees assert were to operate a new International Truck placed in service on November 7, 1947.

The applicable Agreement effective June 1, 1946, in Rule 18 subsection (a) thereof (which is the pertinent provision insofar as this dispute is concerned provides as follows:

"Rule 18. (a) Except as to positions specified in Rule 1 (b) and 1 (c) and except as otherwise provided in this Rule 18 and in Rule 19, new positions or vacancies in daily and monthly rated positions, and in hourly rated positions above the rank of laborer in the Store Department, known to be of more than thirty (30) calendar days' duration, will be promptly bulletined in agreed upon places accessible to all employees affected, the bulletin to show location, title of position and brief description of the principal duties to identify the position for information of applicants, hours of service, meal period, rate of pay and assigned day off duty."

The bulletin of December 8, 1947 carried no description of the duties of the position, merely setting forth its title in addition to the other items required under 18 (c). We do not believe that it can be seriously questioned that the bulletin did not comply with the requirements of 18 (a). Titles of positions, while somewhat indicative of the duties required thereunder rarely serve as an accurate medium of identifying the position or of acquainting interested parties with the duties involved. This apparently has been recognized by the Carrier for after this complaint by the Organization subsequent bulletins (as shown by Carrier's own exhibits) covering the position of Chauffeur at Brainerd Store carried the following description of duties, "Ability to operate power driven equipment as in general use at Brainerd Store." It follows, of course, that Carrier was in violation of the Agreement in issuing the Bulletin No. 3283. This conclusion, however, does not dispose of all of the issues raised by the instant claim.

As appears from the claim of Employees a new International Truck was placed in service at Brainerd Store on November 7, 1947. Employees assert despite the lack of descriptive duties they had every reason for assuming that the position advertised by Bulletin No. 3283 was for a Chauffeur to operate the International Truck. Therefore, when a former laborer (one Sticha) junior to claimant Olson (who at the time of bid was employed as a Chauffeur at Brainerd Store) was awarded the position advertised, they filed claim. Carrier's superintendent in denying the claim said that claimant Olson was already a Chauffeur. He therefore assigned Henry Sticha to the vacancy. It further appears from the record, that when appointed to the position Sticha was generally assigned to operating a five ton Yale Cable King which had formerly been generally operated by one C. C. Badger who then was generally operating the new International. Employees also claim that the removal of Badger from the assignment of driving the Cable King was violative of Rule 18. Thus the question is presented as to whether or not the duties of the position of Chauffeur in the Brainerd Store are confined to the operation of a specific machine and as a corollary, whether or not bulletins advertising vacancies in Chauffeur positions should carry a description of duties to that effect.

With respect to the last issue mentioned in the preceding paragraph Employees have submitted statements from Chauffeurs in the Brainerd Store indicating that they are assigned to operate specific machines, except when the regular assigned machine is tied up for repairs. Carrier asserts, however, that the practice of not assigning Chauffeurs to specific machines in the Store Department has obtained for many years prior to and subsequent to current Clerks' Agreement, although seniority of employees working as Chauffeur is recognized by giving senior employees preference as to type of machines operated consistent with their qualifications and service requirements. Carrier submits a number of bulletins advertising vacancies in the Store Department beginning with 1940 and asserts that none of the successful bidders for those vacancies were assigned to any particular machines. This latter evidence is of no consequence in establishing an interpretation of Rule 18 (a) inasmuch as the rule was amended in 1946 adding the language under-

scored in our quotation thereof. However, the fact that the successful bidders on those bulletins were not assigned to particular machines is some evidence of the fact that the duties of the position of Chauffeur in the Brainerd Store were not confined to the operation of a specific machine. When we add to this further fact that senior employes were moved from one machine to another consistent with qualifications and service requirements (apparently without protest from the Employes until this time) plus the fact that the employes admit that when the machine to which they are generally assigned is laid up for repairs they operate other machines, we are led to the conclusion that the duties of a Chauffeur position at Brainerd Store are not confined to the operation of a specific machine. It follows, therefore, that it is not a violation of 18 (a) not to include in the description of the principal duties of the position of Chauffeur at Brainerd Store a statement with respect to the specific machine to be operated.

We believe that it is clear, in view of the above, that items 2 and 3 of the claim must be denied. We do not pass upon whether or not the quoted description of duties in paragraph 3 of this Opinion is a sufficient compliance with the requirements of 18 (a) since that question is not before us.

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 Carrier violated the Agreement as alleged in Claim 1 except for that portion thereof which reads "to operate a new International Truck placed in service November 7, 1947." That Carrier did not violate the Agreement as alleged in Claim 2.

AWARD

Claim 1 sustained to extent indicated in Opinion and Findings.

Claims 2 and 3 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of February, 1950.