Award No. 5539
Docket No. CL-5551

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

SOUTHERN PACIFIC RAILROAD COMPANY OF MEXICO (at Nogales, Arizona)

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

Carrier violated Rule 25 of Clerks' Agreement when it refused to bulletin position of Chief Clerk, Nogales, Arizona, Freight Station.

EMPLOYES' STATEMENT OF FACTS: The dispute here involved was submitted to your Honorable Board in a joint submission by letter of December 10, 1948, bearing signature of Mr. P. E. Baffert, Terminal Superintendent for the Southern Pacific Railroad Company of Mexico, and Mr. C. R. Reynolds, General Chairman for the Organization.

The joint submission filed with your Board under date of December 10, 1948, over the signature of both parties contained "Employes' Statement of Claim," "Joint Statement of Facts," "Position of Employes," "Position of Carrier," "Employes' Answer to Position of Carrier," and "Carrier's Exhibit A" consisting of nine (9) sheets, it being affirmed by both parties that "all data herein submitted have been presented to the duly authorized representatives of the employes and carrier and are made part of the particular question in dispute" and it being further stated that "Oral hearing is not desired."

The joint submission above described was accepted by your Honorable Board and the following letter addressed jointly to the parties by Mr. A. I. Tummon, Acting Secretary, Third Division, National Railroad Adjustment Board, under date of December 23, 1948:

"Gentlemen:

> "Acknowledgment is made of 15 copies joint submission covering dispute involving violation Rule 25, Clerks' Agreement, when Carrier refused to bulletin position of chief clerk, Nogales, Arizona, Freight Station, to which we have assigned docket number CL-4482.
>
> "The file in this case indicates neither party desires oral hearing and, therefore, the Division considers the case closed."

On July 19, 1949, your Honorable Board with Referee Francis J. Robertson participating rendered Award 4470 in Docket CL 4482, the "Opinion of Board," "Findings," and "Award" reading as follows:

4470 of this Division is final and binding upon both parties, and the dispute covered by that award cannot be submitted for reconsideration by this Division.

In view of the foregoing, the carrier respectfully objects to the assumption or exercise of jurisdiction in this docket and formally moves that the Board dismiss the claim which is the subject of this docket.

* * * *

Without prejudice to the foregoing motion to dismiss, the carrier respectfully calls attention to the fact that there has previously been submitted to this Board a joint submission in this dispute, identified by Docket No. 4482, including joint statement of facts and the positions of both parties, which joint submission the carrier respectfully requests be included and made a part of this record.

(Exhibits not reproduced)

OPINION OF BOARD: On March 2, 1947, the position of Chief Clerk, Freight Department at Nogales, Arizona, became vacant because of the illness of the incumbent. On April 19, 1947, after the position had been vacant for more than thirty days, the Organization requested the Carrier to bulletin it in accordance with Rule 25(a), current Agreement, which provides in part:

> "(a) All new positions and vacancies, except those of truckers and laborers, shall be bulletined at least semi-monthly.
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> * * * *
>
> "Note: New positions and/or vacancies not exceeding thirty (30) days duration may be filled without bulletin, at option of employing officer. New positions and/or vacancies of doubtful duration need not be bulletined until the expiration of thirty (30) days, in connection with which, so far as practicable, the approximate duration of the work will be given."

The Carrier urges that it was not required to bulletin the position for the reason that it was excepted from the Agreement. In support of this contention, it cites Rule 22, current Agreement, which, in part, provides:

> "All assignment, displacements and promotion under these rules shall be based on seniority, fitness and ability. Fitness and ability being sufficient, seniority shall prevail, except, however, that this provision shall not apply to excepted position, namely Chief Clerk, Freight Department, and Secretary to the Terminal Superintendent."

We point out that this latter rule specifically names the Chief Clerk, Freight Department as an excepted position. It is so plainly stated that it is not subject to interpretation. It is stated in simple language, the meaning of which is well understood in the industry. There is no basis for saying that the meaning is indefinite or ambiguous.

The Organization contends that Rule 25 (a) sets forth the only exceptions when it eliminates only truckers and laborers from the rule. It urges that by stating the exceptions that it elminates all others. This is, of course, a proper guide to be applied to an indefinite and ambiguous provision in order to determine the intent of the parties, but a rule of construction has no application to a provision that is plainly and clearly stated. In other words, the rule of construction which the Organization asks us to apply cannot be used here to change or modify the statement in Rule 22 specifically designating the Chief Clerk, Freight Department as an excepted position.

We are obliged to say, therefore, that the Carrier did not violate Rule 25 of the Agreement when it refused to bulletin the position of Chief Clerk, Nogales, Arizona, Freight Station.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1951.