

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, 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 that:

(1) Carrier violated the Clerks' Agreement in the General Office at St. Paul, Minnesota, when on August 5, 1950 it arbitrarily removed Mrs. E. M. Corbett from the position of extra relief P.B.X. Operator and refused to recognize her employment status as December 25, 1949; and that

(2) Carrier shall now reimburse Mrs. Corbett for eight hours each day, retroactive to June 1, 1950 that she is deprived of the right to work and any employe now performs service as extra relief P.B.X. Operator who commenced in the service of the Carrier subsequent to December 25, 1949.

EMPLOYEES' STATEMENT OF FACTS: In December 1949 Mrs. E. M. Corbett made application for and was employed as an extra relief P.B.X. Operator, working her first shift on December 25, 1949 and working on various dates until August 5, 1950. On June 1, 1950 Carrier employed another extra relief P.B.X. Operator, Mrs. Ira Nelson, Carrier using both of these employes intermittently until August 5, 1950. After this date, Carrier refused to use Mrs. Corbett on its assertion that she did not have an employment date under our rules. Mrs. Nelson, having an employment date of June 1, 1950, has been called for all extra relief P.B.X. work since August 5, 1950.

POSITION OF EMPLOYES: That Mrs. Corbett was a qualified P.B.X. Operator cannot be disputed. See Employees' Exhibits Nos. 1 and 2. Nor is the fact that she did perform service as an extra relief P.B.X. Operator commencing with December 25, 1949 and continuing through August 5, 1950 in dispute. We contend that Mrs. Corbett established an employment date with the Carrier of December 25, 1949, based on the provisions of Rule 54, which reads as follows:

"Rule 54—APPLICANTS FOR EMPLOYMENT. Applications for employment will be approved or disapproved within sixty (60) calendar days after applicant begins work, and employment shall be considered temporary until application is approved. If application is not disapproved within the sixty (60) day probationary period, the application will be considered as having been approved.

first employed to perform extra work as a telephone switchboard operator in 1945, or some four years prior to the time that Mrs. Corbett first took service as an extra telephone switchboard operator. If the Employees are correct that telephone switchboard operators are covered by Rule 3(b), it follows as a matter of course that Miss Ira Nelson has a prior right over Mrs. Corbett to perform extra work as a telephone switchboard operator.

As before stated, Rule 3(b) applies to hourly rated position and platform employees and to hourly rated laborers in the Store Department. That rule gives to such employees an employment date prior to the establishment of seniority and also gives to such employees a preferential right on the basis of their employment dates to perform service. No comparable provision appears in Rule 3(a), which rule applies to daily and monthly rated positions, including positions of telephone switchboard operators, which positions are paid a daily rate. In the absence of any rule that gives to daily rated telephone switchboard operators who have not established seniority, an employment date, it is axiomatic that occupants of such positions have no right by agreement to perform service.

The claim of the Employees is that Mrs. Corbett be paid for eight hours on each date that an employee who commenced service subsequent to December 25, 1949 works as an extra telephone switchboard operator. The employees who have established seniority as telephone switchboard operators are regularly assigned to such positions and the seniority dates established by these employees antedate December 25, 1949. Miss Ira Nelson first took service as a telephone switchboard operator in 1945 and Mrs. I. R. Lawther was first employed as an extra telephone switchboard operator on December 18, 1949. No additional employees are used to perform extra work as telephone switchboard operators. The facts in this case in and of themselves are fatal to the claim of the Employees.

The Carrier has shown that positions of telephone switchboard operators are daily rated positions, that Rule 3(a) applies to telephone switchboard operators, and that Rule 3(a) does not give to telephone switchboard operators who have not established seniority an employment date. The Carrier has also shown that Rule 3(b) applies to employees who take service on hourly rated station and platform positions and hourly rated positions of laborer in the Store Department, and that employees who take service on such positions and who have not established seniority are given an employment date and are given preference in the performance of service on the basis of their employment dates.

The Carrier has further shown that viewing the claim of Mrs. E. M. Corbett from a standpoint most favorable to the Employees, there is nevertheless no basis for the claim presented in behalf of this employee. Miss Ira Nelson first took service as an extra telephone switchboard operator in 1945; Mrs. I. R. Lawther first took service as an extra telephone switchboard operator on December 18, 1949; and Mrs. E. M. Corbett first took service as an extra telephone switchboard operator on December 25, 1949.

This claim is without merit and should be denied in its entirety.

All data in support of the Carrier's position in connection with this claim has been presented to the duly authorized representative of the Employees, and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: It appears that, by settlement agreements between the former General Chairman of the Organization and the Chief of Personnel of the Carrier, the parties have agreed upon an interpretation and application of Rules 3 (a) and 3 (b) contrary to that here urged in support of this claim. Such an interpretation by the responsible parties under the Agreement is subject to change only by agreement and not by unilateral appeal to this Board.

In those settlements it was agreed that an employe filling short vacancies in positions subject to bulletin could not acquire seniority under Rule 3 (b) but could only acquire it in conformity with Rule 3 (a). Since, thereby, such employes are not covered by Rule 3 (b) and since it is only employes covered by Rule 3 (b) who are accorded certain work preference on the basis of their employment date, this claim is without merit.

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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1953.