

Award No. 6891
Docket No. CL-7004

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

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

(a) That the Carrier violated the seniority rules of the Agreement of October 1, 1942, amended, between the parties when it employed and assigned P. K. Coulter, T. H. Thompson, E. L. Haupt and H. W. Nickel to perform work in the Freight Department for the period December 6, 1951, to December 25, 1951, both dates inclusive, and;

(b) That the work performed by P. K. Coulter, T. H. Thompson, E. L. Haupt and H. W. Nickel should have been assigned to senior, qualified available employees with established seniority in the Freight Department, and;

(c) That claims filed for and in behalf of employees for 8 hours at rate and one-half their respective rates of pay for each day and situation where the violation occurred be paid by the Carrier as follows:

Date	Claim for	Position	Filled by
Dec. 6, 1951 (Thursday)	McGan	8 AM-4 PM Union Station	Nickel
	Morgan	4 PM-12 M " "	Haupt
	Vanderwalker	4 PM-12 M McGee Street	Thompson
	Healey	12:01 AM-8 AM " "	Coulter
Dec. 7, 1951 (Friday)	Olson	8 AM-4 PM Union Station	Nickel
	Morgan	4 PM-12 M " "	Haupt
	Vanderwalker	4 PM-12 M McGee Street	Thompson
	Healey	12:01 AM-8 AM " "	Coulter
Dec. 8, 1951 (Saturday) (Double)	Gentry	8 AM-4 PM Union Station	Nickel
	Buck	4 PM-12 M " "	Haupt
	Tunget	4 PM-12 M McGee Street	Thompson
	Keeler, T. L.	12:01 AM-8 AM " "	Coulter
Dec. 9, 1951 (Sunday)	Simmons	8 AM-4 PM Union Station	Nickel
	Reed	4 PM-12 M " "	Haupt
	Blackburn	4 PM-12 M McGee Street	Thompson
	Gentry	12:01 AM-8 AM " "	Coulter

Date	Claim for	Position	Filled by
Dec. 10, 1951 (Monday)	Simmons Reed Dorian Keeler, T. L.	8 AM-4 PM Union Station 4 PM-12 M " " 4 PM-12 M McGee Street 12:01 AM-8 AM " "	Nickel Haupt Thompson Coulter
Dec. 11, 1951 (Tuesday)	Morris Franz Crebbs Blair	8 AM-4 PM Union Station 4 PM-12 M " " 4 PM-12 M McGee Street 12:01 AM-8 AM " "	Nickel Haupt Thompson Coulter
Dec. 12, 1951 (Wednesday)	Morris Blair Crebbs McGan	8 AM-4 PM Union Station 4 PM-12 M " " 4 PM-12 M McGee Street 12:01 AM-8 AM " "	Nickel Haupt Thompson Coulter
Dec. 13, 1951 (Thursday)	McGan Morgan Vanderwalker Healey	8 AM-4 PM Union Station 4 PM-12 M " " 4 PM-12 M McGee Street 12:01 AM-8 AM " "	Nickel Haupt Thompson Coulter
Dec. 14, 1951 (Friday)	Olson Morgan Vanderwalker Healey	8 AM-4 PM Union Station 4 PM-12 M " " 4 PM-12 M McGee Street 12:01 AM-8 AM " "	Nickel Haupt Thompson Coulter
Dec. 15, 1951 (Saturday)	Blackburn Tunget Keeler, J. L. Gentry	8 AM-5 PM Mill St. & W. E. 4 PM-12 M Union Station 4 PM-12 M Mill Street 12:01 AM-8 AM McGee St.	Nickel Haupt Thompson Coulter
Dec. 16, 1951 (Sunday)	— Tunget Simmons Blackburn	8 AM-5 PM Mill St. & W. E. 4 PM-12 M Union Station 4 PM-12 M Mill Street 12:01 AM-8 AM McGee St.	Nickel Haupt Thompson Coulter
Dec. 17, 1951 (Monday)	— Blackburn Reed Keeler, T. L.	8 AM-5 PM Mill St. & W. E. 4 PM-12 M Union Station 4 PM-12 M Mill Street 12:01 AM-8 AM McGee St.	Nickel Haupt Thompson Coulter
Dec. 18, 1951 (Tuesday)	Roher Franz Morris Blair	8 AM-5 PM Mill St. & W. E. 4 PM-12 M Union Station 4 PM-12 M Mill Street 12:01 AM-8 AM McGee St.	Nickel Haupt Thompson Coulter
Dec. 19, 1951 (Wednesday)	Roher McGan Morris Blair	8 AM-5 PM Mill St. & W. E. 4 PM-12 M Union Station 4 PM-12 M Mill Street 12:01 AM-8 AM McGee St.	Nickel Haupt Thompson Coulter
Dec. 20, 1951 (Thursday)	Morgan McGan — Healey	8 AM-5 PM Mill St. & W. E. 4 PM-12 M Union Station 4 PM-12 M Mill Street 12:01 AM-8 AM McGee St.	Nickel Haupt Thompson Coulter
Dec. 21, 1951 (Friday)	Vanderwalker Morgan — Healey	8 AM-5 PM Mill St. & W. E. 4 PM-12 M Union Station 4 PM-12 M Mill Street 12:01 AM-8 AM McGee St.	Nickel Haupt Thompson Coulter

Date	Claim for	Position	Filled by
Dec. 22, 1951 (Saturday)	Blackburn	8 AM-5 PM Mill St. & W. E.	Nickel
	Tunget	4 PM-12 M Union Station	Haupt
	Keeler, J. L.	4 PM-12 M Mill Street	Thompson
	Gentry	12:01 AM-8 AM McGee St.	Coulter
Dec. 23, 1951 (Sunday)	—	8 AM-5 PM Mill St.	Nickel
	Tunget	4 PM-12 M Union Station	Haupt
	Simmons	4 PM-12 M Mill Street	Thompson
	Blackburn	12:01 AM-8 AM McGee St.	Coulter
Dec. 24, 1951 (Monday)	—	8 AM-5 PM Mill St.	Nickel
	—	4 PM-12 M Union Station	Haupt
	—	4 PM-12 M Mill Street	Thompson
	Simmons	12:01 AM-8 AM McGee St.	Coulter
Dec. 25, 1951 (Tuesday)	Reed	12:01 AM-8 AM McGee Street	Coulter

EMPLOYEES' STATEMENT OF FACTS: Due to the large and expanded volume of U. S. Mail handled by the Carrier at and through its Union Station during the Christmas season it utilizes facilities at its 20th and McGee Street Team Track for loading and unloading carload lots of mail, the Team Track being located approximately two blocks from the Union Station. This operation requires the performance each year of additional clerical work by the Freight Department, as described in attached Employees' Exhibit "A", being copy of letter dated November 21, 1949, posted on Bulletin Boards in the Mail and Baggage Department. This dispute arises out of the establishment and filling of six clerical positions during December, 1951.

The factual situation being described here in summarized form is covered in detail by Employees' Exhibit "B" attached, being copy of letter by the General Chairman addressed to Mr. G. W. Turner, Freight Agent, dated January 4, 1952, and its attachments, the latter being copies of vacancy and assignment bulletins, a statement of work performed by all employees of the Freight Department during the period of the claim and copy of letter interpretation of Rule 2, first paragraph.

The evidence attached in the form of Employees' Exhibit "B" shows the factual situation in chronological order to be as follows:

(1) At conference with the Freight Agent on December 5, 1951, the General Chairman inquired if reports that six positions would be put on during the Christmas rush period were fact. Being informed that such was the fact, the General Chairman informed the Freight Agent that the assignment of persons having no seniority rights established in the Freight Department to these six positions would be in violation of the Agreement. (Exhibit "B", page 1).

(2) On December 5, 1951, the Carrier bulletined six positions as evidenced by Vacancy Bulletin No. 113. (Exhibit "B", page 5).

(3) On December 6, 1952, the Carrier assigned Utility Clerk Roher to one of the six positions and Messenger Swenton to another one of the six positions, both being employees with established seniority. On the same date it hired or assigned Thompson, Coulter, Nickel and Haupt to the remaining four positions. (See Exhibit B, pages 22, 23, 27 and 28). According to information developed by the Employees, Nickel was a salesman for the Puritan Laboratories, a cattle feed company; Thompson a student at the Western Dental College; Coulter and his wife operated a dancing school and Haupt, who held seniority in the Mail and Baggage Department, was granted a leave of absence to take the Freight Department work. See Employees' Exhibit D, page 3 for copy of the Haupt leave of absence.

The Carrier avers that the rules were not violated or circumvented and request that the Board so hold.

All of the above has been handled in correspondence or in conference with the Organization.

(Exhibits not reproduced).

OPINION OF BOARD: There is no dispute on essential facts in this record. The situation was created when Carrier employed three men not covered by agreements with Carrier during the Christmas season of 1951; the days involved were December 6 to 25, both inclusive. The apparent reason being increase in the U. S. Mail handled by Carrier's Freight Department at its Union Station and McGee Street locations, Kansas City, Missouri. Another employe was also hired for this period by giving a leave of absence from the Mail and Baggage Department.

It is contended by Petitioners that this work should have been assigned to senior, qualified available employes with established seniority in the Freight Department and hence claims (a), (b) and (c).

That on December 5, 1951, Carrier's Freight Agent issued vacancy Bulletin No. 113, establishing six, round the clock, seven days per week, yard clerks' positions, three located at Union Station and three at McGee Street. That these positions were abolished December 26, 1951, by notice, see Exhibits in record. That the entire procedure, including additional bulletining, assignments, etc., shows the temporary nature of the work. And that Carrier's statements to the effect that the positions were of unknown duration is entirely erroneous and without merit. That the entire proceeding was a subterfuge done in the hope that a new employe could be assigned by bulletin in time to use such employes rather than regular employes on an overtime basis. Cited in support of this position, rules of the agreement and Awards 2469, 5195, 5240 (same parties, same agreement), 5078, 5620, 5630, 5717, also Awards 2341 and 6513.

Respondent Carrier states its position as follows: Citing Rules 6, 2, 7, 8, 9 and 10 and Awards 6697, 6559, 6184, 5467 with others. That there is nothing in Rule 2 which forbids or attempts to forbid the creation of new positions or the hiring of new employes. That this Division has held that Carrier may augment its forces when needed, citing Awards 6559, 6184 and 5467.

That Carrier created six new positions, two of which could be filled by employes with **established seniority** in this Department, leaving four to be filled, which was done with new employes and Employes petitioning have made no showing that there were employes in the Department with seniority who could have filled these positions.

That the issue here presented does not turn upon the seniority status or lack of it of these new employes. Carrier, for a certain period of time, needed additional positions to carry on its work. These were created, as Carrier had a right to do, were properly bulletined for bids and in so doing there was no violation of contract.

We consider that although a plausible showing is made by Carrier for the hiring of outsiders to the Agreement, yet, in interpreting Rule 2 Interpretation, the employes hired had not so acquired seniority when hired for this work. The interpretation apparently applies only to Rules 6, 9 and 10 as stated therein. Also see Award 2469 involving these same parties and a similar agreement.

We feel that the claims should be sustained on the record presented here. However, we do not believe that it follows that the same should be sustained to the extent of overtime rate as this would be a penalty for work not per-

formed and should only be sustained for the pro rata rate. See Awards 5939, 6013 and others cited therein.

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 Claims (a) and (b) are sustained; Claim (c) sustained but only at pro rata rate.

AWARD

Claim (a) sustained.

Claim (b) sustained.

Claim (c) sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 17th day of February, 1955.