

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

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**PARTIES TO DISPUTE:**

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

**SEABOARD AIR LINE RAILROAD COMPANY**

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

The Carrier violated and continues to violate the rules of the Clerks' Agreement when on June 27, 1951, and subsequent thereto, they utilized individuals, who had not acquired seniority rights, to fill short vacancies in regularly established positions thereby denying employees holding seniority the right and opportunity to fill short vacancies on those positions when they were willing, available and qualified to perform the work.

(a) That as a penalty for such violations the Carrier shall now pay—Clerk J. A. Wilson for eight hours at time and one-half rate, based on a pro rata daily rate of \$13.37 per day, for each of the following dates—June 27, 28, 29 and July 2, 3, 6, 9, 10 and 13, 1951.

Clerk J. H. Clayton for eight hours at the time and one-half rate, based on a pro rata daily rate of \$13.37 per day, for each of the following dates—July 4, 5 and 11, 1951.

Clerk G. L. London for eight hours at the time and one-half rate, based on a pro rata daily rate of \$13.37 per day, for each of the following dates—August 1, 2, 3 and 4, 1951.

Clerk B. G. Martin for eight hours at the time and one-half rate, based on a pro rata daily rate of \$13.45 per day, for August 5, 1951.

(b) That the Carrier shall also pay all claims that have been filed subsequent to June 27, 1951 which are based on the use of individuals, who have not acquired seniority rights, to work short vacancies on regularly established positions, thereby denying employees with established seniority their rights under the Clerks' Agreement when they were willing, available and qualified to perform the work.

(c) That all such similarly based claims be paid until the violation is corrected by assigning Clerks with established seniority to fill short vacancies in regularly established positions.

**EMPLOYEES' STATEMENT OF FACTS:** On June 22, 1951, Carrier advertised at Hamlet, N. C., the position of Vent Clerk as the former in-

(14) To summarize:

1. Mrs. Hill and Mr. Byrd were employees as defined in the Railway Labor Act. Under the provisions of Rule 5(b) and Rule 13 of the Agreement and under the circumstances hereinbefore set out, Carrier was within its rights to temporarily assign them to the positions in dispute pending assignment by bulletin.

2. Carrier's action in the instant case was not a departure from the practice of long standing and if the employees are dissatisfied with the rules of the agreement, it is their duty to negotiate with the Carrier for a change thereof.

3. There is no provision in the Clerks' Agreement stipulating or implying that a clerical employee must possess seniority before being entitled to certain work and neither is there any provision singly or collectively stipulating or implying that unassigned work, as here involved, is work that regularly assigned employees have a right to perform to the exclusion of extra employees just because the former are willing and desirous of enhancing their earnings at the overtime rate of pay.

All data used herein has been discussed with or is well known to Organization representative.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The question here presented for consideration is: Can Carrier in filling bulletin vacancies pending assignment by bulletin, use extra employees without seniority status when there are regularly assigned employees on other positions with seniority standing who are available, qualified and willing to perform the work?

In the instant case incumbents of a Vent Clerk and a Camp Clerk position bid on and were awarded two other positions. When they moved to the new positions, vacancies were created, which were bulletined and filled by extra employees pending assignment and until the successful bidder reported for work.

It is agreed by the parties that neither Hill nor Byrd, the employees filling these vacancies, had any seniority status at the time the questioned positions were filled by them.

The claims are for overtime penalty rate, which contention we reject under the situation here presented on authority of Award 4969. The question presented then resolves itself into one involving the right of Claimants to perform the work in question on pro rata rate.

The various rules of the current Agreement cited to control the present situation are discussed at considerable length in the record and it is considered that the setting out of the same and reciting such discussion would unduly extend this Opinion, therefore this will not be done herein. Suffice to say Petitioners contend that Claimants were entitled to this work at the overtime penalty rate. Respondent Carrier takes the position, in brief, that the work performed was not a part of any assignment and no rule of the Agreement forbids the right of Carrier to use employees as was done here, and that overtime penalties are not involved as if this were true compensation at such rate would be for work not performed. That practice over a period of 20 years controls in this case as the Organization has not protested the same and, therefore, have recognized the application of Rules 5(b) and 13. And that no rule is shown requiring vacancies of less than thirty days be filled by employees with established seniority dates. Citing Awards 4969, 6036, 6601, 6697, 6874 and Rules 2(c), 3 (d), 5(b) and 58(c). These cited rules on the proposition that extra employees without seniority are given preference over regular employees in performing work on days not a part of any assignment.

In the situation here presented we are of the opinion that Carrier was within its rights in the position taken and no rules of the Agreement were violated thereby.

**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 the Agreement was not violated.

**AWARD**

Claims denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST:** (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 15th day of April, 1955.