

Award No. 7312
Docket No. CL-7272

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Le Roy A. Rader, Referee

PARTIES TO DISPUTE:

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

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

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

(a) Carrier violated the rules of the Clerks' Agreement on December 8, 10, 11, 14, 15, 16, 17, 18, 21, 23, 24, 28, 29 and 30, 1953 and subsequent dates, when it blanked positions of Typists and denied Mrs. O. Blydenburgh's request to be assigned to these temporary vacancies, and

(b) Clerk O. Blydenburgh be compensated at the rate of pay of the blanked positions which were denied her.

JOINT STATEMENT OF FACTS: Mrs. O. Blydenburgh was engaged September 23, 1953 for employment as Key punch Operator. However, she did not have sufficient outside Key punching experience to entitle her to receive the going rate as Key punch Operator in accordance with Exhibit 14 of the Clerks' Agreement. On November 25, 1953 she was qualified as a Typist.

Because of reduction in force, Mrs. Blydenburgh was furloughed December 1, 1953. Mrs. Blydenburgh was recalled and assigned by bulletin effective December 8, 1953 to a permanent position as Key punch Operator. On December 8, 1953 she made application, by letter, for position "B-5", Typist, in the Disbursements Division which was temporarily vacant due to a step-up account illness, but permission was not granted.

On December 9, 1953 due to an increase in typing vacancies her request for that date was granted and she was used on a temporary typing vacancy at the rate of \$13.82.

On December 10, 1953 the Carrier called G. Kelly, an employe with no Group 1 seniority rights who helps out in emergencies, to fill position of Typist rated at \$13.82.

On the other dates claimed by Mrs. Blydenburgh, it was felt by Management that, to have granted her request and used her as a temporary Typist instead of having her remain on the permanent Key punch Operator's position to which she had been assigned by bulletin, would have caused undue impairment of the services.

OPINION OF BOARD: This claim is presented on a joint statement of facts.

Petitioner in support of the claim relies on Rules 3(a), 7(a) and (b) and also on Exhibit No. 14 set out in the record.

Carrier's position, in brief, is that Rule 7 and the letter agreement of November 10, 1953 are controlling and the chief reliance is placed on the second sentence of Rule 7(a) which reads as follows:

"* * * When no qualified regular extra or furloughed Employees are available for such positions, senior qualified assigned Employees will be temporarily appointed at their request where resultant changes will not cause undue impairment to the service."

Claimant did make written request to fill the position and was a qualified typist, therefore, she met the requirements of the claimed position and did fill the position on one occasion. However, we fail to find in the record any evidence of sufficient nature on which to base a finding that Carrier acted in an arbitrary or capricious manner in the action taken and on the contrary there appears a logical reason for not using Claimant. In accordance therewith we do not deem that Carrier abused the discretion given in Rule 7(a) in filling the position on the dates cited in the claim.

In construing special rules (which we consider Rule 7(a) to be), the same take precedence over general rules in an agreement. And it is necessary to give a definite meaning to the rule here cited.

On behalf of the parties and in the record a considerable amount of technical evidence is presented and argued on the interpretation of the rules cited as interpreted by awards of the Division on similar fact situations as applied to like rules, however, as stated, that part of Rule 7(a), set out above, has a definite meaning and the same must be so considered.

In the absence of a sufficient showing that the discretion given was abused this claim fails.

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 Employee involved in this dispute are respectively Carrier and Employee 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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1956.