Award No. 7465
Docket No. CL-6885

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(a) Carrier violated the Rules of the Clerks' Agreement in the Passenger Traffic Department when, on April 30, 1952, it assigned Roster No. 5 employe Virginia Reedy to Roster No. 2, Position No. 55, Ticket Clerk, Travis Air Force Base Ticket Office, and;

(b) That employe Virginia Reedy's name be removed from Passenger Traffic Department Seniority Roster No. 2 and restored to Seniority Roster No. 5; and,

(c) That Mary Dubbin and all other Passenger Traffic Department Roster No. 2, employes be compensated for all wage loss sustained for May 1, 1952, and for each and every subsequent date thereafter that employe Virginia Reedy is required and/or permitted to perform service on positions coming within the scope of Seniority Roster No. 2.

EMPLOYES' STATEMENT OF FACTS: 1. There is in evidence an Agreement between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its Employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, bearing effective date of October 1, 1940, which Agreement, reprinted January 1, 1953, including revisions (hereinafter referred to as the Agreement) was in effect on the dates involved in the instant claim. A copy of the Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

2. The Passenger Traffic Department constitutes a separate seniority district as established by Rule 29 of the Agreement, which portion, insofar as here material, reads as follows:

"Seniority Districts

"Rule 29.

"Seniority districts are established as follows:

First—From employes within the scope of the roster (as established in Rule No. 30) where the vacancy occurs or new position is created, except that applications will not be considered from employes with less than thirty (30) days' seniority, unless no applications are received from qualified employes from other rosters with more than thirty (30) days' seniority.

Second—From other employes in the seniority district in the order of their seniority."

Section (f) of Rule 33 prescribes the order of preference ". . . *applications received . . ." shall be given in making assignments. It manifestly* does not require that applications for assignments shall be submitted in writing; in fact the rule is entirely silent as to the manner in which applications will be made. As established at paragraph 2 of Carrier's Statement of Facts, Clerk Reedy made verbal application for position No. 55, followed by written confirmation (Carrier's Exhibit "B"); therefore, under the clear and unambiguous provisions of Section (f), Rule 33, of the current agreement, *it was mandatory, since no applications for said position were received* from clerks on Roster No. 2, that the carrier assign Clerk Reedy to position No. 55. Had Clerk Reedy not been assigned to position No. 55, it would have been necessary to hire a new employe to fill the position.

Rule 32 of the current agreement reads:

"When an employe secures a permanent position, either by assignment notice or in case of excepted position, by appointment, in a department or office covered by another roster in the same seniority district, his name and seniority date shall be transferred to such roster."

It has been established that Clerk Reedy made application for position No. 55 (see paragraph 2 of Carrier's Statement of Facts) and that, since no applications were received from employes of Roster No. 2, Clerk Reedy was properly assigned to said position in accordance with the mandatory provisions of Section (f) of Rule 33 of the current agreement. It therefore *follows that Clerk Reedy's name and seniority date (February 16, 1944) were* correctly transferred from Roster No. 5 to Roster No. 2, in accordance with Rule 32.

CONCLUSION

Carrier asserts it has conclusively established that there is no provision in the current agreement which provides that applications for positions under bulletin shall be in writing; that Clerk Reedy made application for position No. 55; that there was no violation of rules of the current agreement when Clerk Reedy was assigned to position No. 55; and that, therefore, claim submitted in behalf of Mary Dubbin and others on Roster No. 2 is without merit or agreement support and should be denied.

All the data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: On April 17, 1952, Carrier's District Passenger Agent, Sacramento, California, issued Bulletin No. 1, advertising Roster No. 2 position of Ticket Clerk No. 55, located at Travis Air Force Base Ticket Office, about 50 miles from Sacramento. No bids were received.

After the notice had expired by its terms and according to contract, the position was not again advertised but on April 30, the Passenger Agent assigned and presumed to transfer an employe along with her seniority date from Roster No. 5 to Roster No. 2.

The record further shows that the transferred employe never did assume nor take over the duties of the Roster No. 2 position of Ticket Clerk but was permitted to use her newly acquired seniority status to bid for and obtain Roster No. 2 Information Clerk position at Sacramento shortly after and on May 7.

Mary Dubbin, the named claimant has been deprived of the right to exercise her greater seniority by what we consider to be a deviation from and violation of rules that are put in issue by Petitioner. Her claim for wage loss will be sustained, but the balance of claim (c) leaves too much to speculation, conjecture and surmise for ruling and, therefore, claim for purported wage loss on behalf of all other roster employes is denied.

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 violated.

AWARD

Claims (a) and (b) sustained. Claim (c) disposed of in accordance with Opinion above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1956.