

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK CENTRAL RAILROAD (New York District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, New York Central Railroad, Eastern District (except Boston Division):

1. That the Carrier violated the Rules Agreement when it declined to restore to service, Miss A. Clancy who had been furloughed from the Auditor of Miscellaneous Accounts' office, New York City, and instead hired a new man from the street.

2. That Miss Clancy be compensated for all time lost, and that she be restored to service with the New York Central Railroad to whatever position her seniority and qualifications will permit her to take over.

EMPLOYEES' STATEMENT OF FACTS: Miss A. Clancy has been in the service of the New York Central Railroad Company since August 25th, 1941—some 17 years.

On May 21st, 1957, Miss Clancy was furloughed due to a reduction in the forces in the office of Auditor of Miscellaneous Accounts.

Early in November, 1957, Miss Clancy made personal application for employment in office of the District Auditor of Expenditures, stating that she was available for a position when one was open, either temporary or regular.

On November 27th, 1957, a Mr. Thomas Lynch was newly hired and placed on a Messenger-Clerk position in the office of District Auditor of Expenditures, and Miss Clancy's application for reemployment was ignored—Mr. Lynch resigned January 31st, 1958 and Miss Clancy was again not recalled.

There has been no agreement violation and the claim of the employee should be denied.

All of the facts and arguments herein set forth have been made known to the Employees' representatives in the handling of the claim on the property.

(Exhibits not Reproduced.)

OPINION OF BOARD: The claim is (1) that the Carrier violated the Agreement when it declined to restore Claimant to service, and (2) that she should be paid for all time lost and restored to service in "whatever position her seniority and qualifications will permit her to take over."

The provisions of the Agreement cited as applicable are Rules 14 and 16, and portions of Rule 9. They are as follows:

"Rule 9—Bulletin

"New positions or vacancies of 30 days or more in Class 1 will be promptly bulletined in agreed upon places for a period of 5 days; bulletin to show location, descriptive title, hours of service and rate of pay.

* * *

"Employees desiring such position will file their application with the designated official within that time * * *".

"Rule 14—Reducing Forces

"When reducing force, seniority shall govern, senior employees laid off, if available, shall be given opportunity to perform any extra work required and when force is increased will, if qualified, be returned to service in the order of their seniority."

"Rule 16—Filing Applications

"Employees filing applications for positions bulletined on other roster, or, upon the opening of new stations or offices, will if qualified be given preference over non-employees."

On May 22, 1957, due to a force reduction, Claimant was furloughed from the Office of the Auditor of Miscellaneous Accounts, in which her seniority date was October 24, 1956; it did not entitle her to displacement rights on any remaining position in the district.

In an attempt to find her a position she was referred to the District Auditor of Expenditures. There she took a typing examination which she failed to pass, and was shown the Comptometer Operator's test, which she did not take. On June 20, 1957, she applied for a vacancy as Clerk-Key Punch—Tab Machine Operator but was rejected for lack of training and experience. The Carrier then arranged for her to attend a five day school for key punch operators conducted by International Business Machine Corporation, after which, in three separate tests, she failed to qualify.

In November Claimant personally visited the District Auditor of Expenditures in whose department she had no seniority, and asked if any open jobs were available. Finding that there were none, she stated orally that she was available and interested in any vacancy, but mentioned no specific position and filed no written application. Later in November the job of Messenger-Clerk became vacant and was bulletined. No employee was on furlough from the office and no bid was submitted by an employee during the five day period. A new employee, Thomas Lynch, was employed on November 29, 1957, but remained only until January 31, 1958. Again Claimant filed no bid; the position was filled in February 1958, and since held, by an employee senior to Claimant.

While the claim is that the Carrier violated the Agreement by not giving her the Messenger-Clerk vacancy on November 29, 1957, the remedy sought, in addition to pay for all time lost, is that she be restored to service in "whatever position her seniority and qualifications will permit her to take over." However, there is no claim that the Carrier has excluded Claimant from any position to which she was entitled by seniority and qualifications, unless that of Messenger-Clerk, so that we are limited to a consideration of that position.

But Claimant has no seniority in the office in which that position existed. For that reason, and since the vacancy did not result from an increase of force after a reduction, Rule 14 does not apply.

The remaining question is whether Claimant was entitled to the position under Rule 16. It is not concerned with seniority, which governs preferential rights as between employees. With regard to "positions bulletined on other roster," it entitles all employees to preferences over non-employees. Under it Claimant was entitled to the bulletined position of Messenger-Clerk as against Lynch, a non-employee, if in fact she filed an application for the position bulletined.

The argument is made that the phrase "filing applications" does not say "filing written applications," and that Claimant's oral statement to the head of the department several weeks previously therefore constituted filing an application. The contention would seem to stretch the meaning of the word "filing," and to bring chaos in employment rights, since fallible individual memories of claims "filed" would take the place of positive orderly records.

But it is not strictly necessary to decide the point, for Rule 9 provides definitely that vacancies shall be bulletined for five days and that employees desiring such position shall file their application with the designated official "within that time." Certainly no application of any kind was made or filed by Claimant within the period of five days during which the job was bulletined. If in fact Claimant was qualified for the position, which we need not here decide, she could have had it by filing her application for that particular job within the five days after it was bulletined, as provided by the Rules. Having failed to do so, she had no right of which the Carrier has deprived her.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

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

That the Carrier did not violate the Rules.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July, 1959.