

Award No. 9571
Docket No. CL-8712

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of the Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement:

1. When on August 16, 1954 the Carrier abolished the position of Timekeeper-AAR Clerk in the Master Mechanic's Office, Nashville, Tennessee and distributed the duties thereof to excepted personnel, and persons or person not covered by our Agreement.
2. When on August 16, 1954 the Carrier refused to assign Mr. Frank L. Turner to the position of timekeeper in the office of the General Superintendent and Chief Engineer at Nashville, Tennessee. Thus denying him the proper exercise of his Seniority Rights to Displace a Junior Employee.
3. That the Position of Timekeeper—AAR Clerk be re-established at the prevailing rate of pay for that position.
4. That Mr. Frank L. Turner be reassigned to his former position of Timekeeper—AAR Clerk or be assigned to the position of Timekeeper in the General Superintendent & Chief Engineer's office, Nashville, Tennessee.
5. That Mr. Frank L. Turner be fully compensated for all Monetary loss caused by the Carrier's failure and refusal to comply with the terms of the Clerks' Agreement. And that Mr. Frank L. Turner be assigned to one of the above mentioned positions, with all Seniority unimpaired.

EMPLOYEES' STATEMENT OF FACTS: Notice was given that the position of Timekeeper—AAR Clerk in the Master Mechanic's Office at the Shops, Nashville, Tennessee, occupied by Frank L. Turner, would be abolished, Effective August 16, 1954. Whereupon Mr. Frank L. Turner gave

Your Award 4011 states:

"The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance."

and in support of this principle also see your Awards 2577,, 3477, 3523 and 4758.

The alternative feature of Employees' petition in part (4) and the latter part of part (5) of their Statement of Claim, as well as the alleged monetary loss, has already been dealt with in this submission and will not be here repeated.

Carrier submits that the claim submitted to your Board is not the claim which was filed and progressed on the property and that for this reason it should be dismissed.

Carrier further submits that there has been no violation of the agreement by Carrier and that there is no basis for a claim to monetary loss.

All data submitted herein has been presented in substance to the duly authorized representatives of the Employees and is made a part of the particular question in dispute.

The Carrier is making this submission without having been furnished copy of Employees' petition and respectfully requests the privilege of filing a brief answering in detail the ex parte submission on any matters not already answered herein, and to answer any further or other matters advanced by the petitioner in relation to such issues.

(Exhibits not reproduced.)

OPINION OF BOARD: The claimant, Frank L. Turner, has a seniority date of March 4, 1920 and was the regularly assigned incumbent to position of timekeeper-AAR Clerk, Master Mechanic's Office, Mechanical Department Shops, Nashville, Tennessee. The claimant's position was abolished by the carrier, by notice, effective August 16, 1954. On August 13, 1954, claimant Turner notified carrier's General Superintendent that he wished to exercise his seniority rights by displacing junior employe, J. W. Pewitt on position of timekeeper in the Office of Superintendent and Chief Engineer.

On August 16, 1954, the carrier addressed a letter to the claimant confirming conversations that the claimant had with Chief Clerk, Mr. Carrier, and in that letter the carrier denied the request of the claimant to displace junior employe, Pewitt.

The evidence shows that the claimant admitted to the Chief Clerk on August 16, 1954, that he thought that he could handle the timekeeper's job in the Office of the Superintendent and Chief Engineer, but that he did not believe that he could take an examination to qualify for the job at that time.

The claimant, after he was refused Pewitt's position, did not exercise his seniority to any other position within a five day period; therefore, he forfeited his seniority under Rule 17 (f), and ceased to be an employe of this carrier prior to filing his claims.

Rule 17 (f) reads as follows:

"An employe displaced from his position under these rules shall within five calendar days after actual displacement, with due regard to fitness and ability, displace a junior, or exhaust seniority rights to positions held by juniors before being eligible to take the extra board. Failure to comply shall result in seniority forfeiture."

As to claim No. 1, there is a conflict in the statements made by the carrier and by the employes as to the distribution of the remaining duties of the timekeeper-AAR Clerk after August 16, 1954, and this conflict cannot be resolved by this Board.

As to claim No. 2, the carrier refused to assign this claimant to the position of timekeeper in the Office of the General Superintendent and Chief Engineer at Nashville, Tennessee, because, by his own admission, he could not take an examination required under Rule 7(b) of the effective Agreement. He therefore was not qualified to displace Pewitt.

As to claim No. 3, this Board does not have the right to re-establish this position. The claimant, however, forfeited his seniority on August 21, 1954, under Rule 17 (f), as he did not displace a junior employe or exhaust his seniority rights to positions held by junior employes within five calendar days after his position was abolished or within five calendar days after he was notified by the carrier that, due to his outside interests and qualifications, he was denied the right to displace employe Pewitt.

As to claim No. 4, this Board cannot assign the claimant to his former position of timekeeper-AAR Clerk, or to the position of timekeeper in the Office of the General Superintendent and Chief Engineer due to the fact that this claimant had forfeited his seniority as of August 21, 1954.

As to claim No. 5, due to the fact that he did not meet the qualifications to displace employe Pewitt, he is not entitled to any compensation.

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 Employe involved in this dispute are respectively Carrier and Employe 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 Agreement.

AWARD

Claim Nos. 1, 2, 3, 4, and 5 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION,

ATTEST: S. H. Schulty
Executive Secretary.

Dated at Chicago, Illinois this 29th day of September, 1960.