

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 2-A-1, 2-A-2, and 3-C-1, when it failed to assign the position of Route Clerk, Freight Station, Indianapolis, Indiana, advertised in Bulletin No. 45, dated March 23, 1955, to the Claimant and also failed to abolish the position. A notice dated March 30, 1955, advised that Bulletin No. 45 was withdrawn. The position advertised in the bulletin was not abolished.

(b) The Claimant, Roy Sims, should be allowed eight hours pay a day, as a penalty, for March 30, 1955, and all subsequent dates until the violation is corrected. (Docket 103)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimant in this case, Roy Sims, was the incumbent of clerical position, Symbol No. FI-106-F, at the Indianapolis, Indiana, Freight Station, prior to March 30, 1955, tour of duty 3:00 P. M. to 11:00 P. M., rest days Sunday and Monday, rate of pay \$315.59 a month. He has a seniority date on the seniority roster of the Southwestern Region in Group 1.

tion of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION: The Carrier has shown that its action in withdrawing advertising Bulletin No. 45 after the expiration date of the advertising period was in no way prohibited by the rules of the Agreement but, on the contrary was accomplished strictly in accordance therewith.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employees, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

All data contained herein have been presented to the employee involved or to his duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The pertinent rules involved are as follows:

"Rule 2-A-2(b): Bulletined positions or vacancies will be awarded within five days following close of the advertising period, and, except when conditions beyond control of Management prevent, notice of award will be posted in places accessible to employees affected, on the second Wednesday following the posting of the advertising bulletin or on the succeeding working day when such Wednesday is a holiday."

"Rule 2-A-2(c): Notice of award covering bulletined positions showing position, symbol number where such number has been assigned to the position, date bulletined, the name of the employee awarded the position, and the effective date of the award, will be posted where the position was bulletined."

The question that must be answered is as follows:

Was the position of Route Clerk awarded to the Claimant on March 30, 1955?

The Joint Statement of Agreed Upon Facts reveals that on March 30, 1955, two notices were prepared in the office of Freight Agent, Young; one notice awarded the Route Clerk position to Roy Sims; the other notice—withdrawn Bulletin No. 45. The withdrawal notice was posted; the award notice—designated as Award No. 45—awarding the position to Mr. Sims was never posted. In fact, it was destroyed by Mr. Young. There is no rule in the Agreement that prevents Carrier from withdrawing Bulletin No. 45.

It was established that the Carrier's Messenger who ran the mimeograph machine kept one copy of award notice No. 45 and gave it to a member of the Organization Protective Committee.

That the Mesenger's action was improper seems undeniable. Also, it is equally obvious that such an improper release of the award did not constitute a "posting" within the meaning of Rule 2-A-2(c).

If the Board hired an employe and the employe never reported for work—no one would claim that the selected employe ever worked for the Board. It is apparent that before the hiring process is completed, the selected employe must report for work.

Let us take another example. Company "A" requested and received job bids from five contracting companies. Company "A" selected one of the five bidders but failed to notify the selected bidder. Would anyone claim that the job had been awarded to the selected bidder? The answer, obviously, is no! The answer would still be "no"—even if the bidder learned from an unauthorized source that it had been selected for the job. There must be an official act of acknowledgement on the part of Company "A" before the selected bidder could consider it had been awarded the job.

The surreptitious delivery of the Carrier's Award Notice to Employee's representative did not constitute proper notice of an award. The mere preparation of the Award Notice imposed no obligations on the Carrier, until the Carrier gave recognition to the Award Notice by officially informing the Claimant that the job had been awarded to him. In the present case—that act, the Carrier never performed. Accordingly, the claim must be 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 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

The Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of October, 1961.