

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
THE COLORADO AND SOUTHERN RAILWAY COMPANY**

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

1. Carrier violated the rules of the Clerks' Agreement at Cheyenne, Wyoming, when it assigned or permitted Telegrapher Ehredt to perform work regularly assigned to and performed by clerks, and failed to call available clerks to perform this work.

2. Carrier shall now be required to pay to each of the clerks available for this work a day's pay for each of the days not used at the punitive rate of the Utility Clerk's position or their regular position, whichever is the higher, as follows:

D. A. Roberts — Dec. 17, 23, 24 and 30th, 1956
H. Suter — Dec. 22 and 29th, 1956
F. W. Schilling — Dec. 21st and 28th, 1956
D. R. Bostron — Dec. 25th, 1956

EMPLOYES' STATEMENT OF FACTS: W. W. Krakow, Yard Clerk at Cheyenne, Wyoming, was scheduled to take his vacation December 5th to December 23rd, 1956. He took his vacation as scheduled, asking for and being granted additional time off December 24th, 1956 to January 1st, 1957. Regular forces were stepped up to fill Krakow's vacancy, leaving a vacancy in Utility Clerk's position.

Some of the work was blanked and some performed by clerks on their rest days between the dates of December 5th and 16th.

There were no Extra Clerks available for this work, the Carrier, therefore, placed furloughed Telegrapher Ehredt on the Utility Clerk's position, a short vacancy, on December 17th, Ehredt working the position through December 30th, 1956.

All data herein and herewith submitted has, in substance, been made known to the duly authorized representatives of the Employees on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: During the period involved in the instant case, the Yard Clerk was on vacation and immediately thereafter on leave of absence. The regularly assigned Utility Clerk was used to fill the vacancy. This, of course, left the Utility Clerk position vacant.

No request was made by any Employee under the Clerk's Agreement to fill the vacancy of Utility Clerk. There were no extra, unassigned or furloughed clerks available.

Carrier employed as a clerk a furloughed telegrapher to fill the vacancy. Claimants, regular assigned Employees, contend that they should have been utilized on their respective rest days to fill the vacancy on the position of Utility Clerk.

We have closely scrutinized the rules of the Agreement cited by the Organization, namely, Rule 1, "Scope"; Rule 2, "Definition of Clerk"; Rule 3, "Seniority Datum"; Rule 4, "Promotion, Assignments and Displacements"; Rule 10, "Short Vacancies"; Rule 15 "Reducing Forces", and Rule 16 "Seniority Roster".

We are of the opinion that under the factual situation herein, there is nothing in the rules cited to prohibit the Carrier from hiring as a clerk a furloughed telegrapher to fill the vacancy on the Utility Clerk's position. See Award No. 7328.

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 Employees involved in this dispute are respectively Carrier and Employees 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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February 1962.