

Award No. 11497

Docket No. CL-11234

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when at Atlanta, Georgia, in the office of Superintendent Car Service, it failed and refused to afford proper preference to employees in filling a temporary vacancy in the position of Ticket Assorter.

(b) Claimant, Mrs. Mary M. Murdock, shall now be additionally compensated at the rate of the Ticket Assorter position from June 16, 1958, and continuing for the duration of such vacancy.

(c) Claimant, Mrs. A. G. Wesson, shall now be additionally compensated at the pro rata rate of the position of Ticket Assorter for two days, viz: June 12 and June 13, 1958.

EMPLOYEES' STATEMENT OF FACTS:

1. The office of Superintendent of Car Service, Atlanta, Georgia, constitutes a seniority district. All employees in the office are assigned a work week beginning on Monday, Saturday and Sunday being rest days. The hours of assignment for all employees in the office and seniority district are 8:15 A.M. to 4:45 P.M., with thirty minutes meal period.

2. Effective Thursday, June 12, 1958, a temporary vacancy occurred in a position of Ticket Assorter in the office of Superintendent Car Service, which was to be filled by the senior qualified furloughed employee on the seniority district.

The three senior qualified employees in the Ticket Assorter Seniority District were:

Mrs. M. M. Murdock — seniority date 11/22/1955

loughed employee who was available at that time and was placed on the position on June 12. Therefore, under agreement rules, the claim in behalf of Mrs. Murdock could not possibly be valid.

Again, carrier respectfully calls the Board's attention to the fact that neither Mrs. Murdock nor Mrs. Wesson registered for extra work with the officer in charge. Rule 8 (a) (7) provides that under such circumstances, they "will be barred from filing claims for pay on account of junior employees being used." Therefore, the claims in behalf of Mrs. Murdock and Mrs. Wesson are barred.

Notwithstanding their failure to register, carrier has shown that every reasonable effort was made by the officer in charge to reach claimants on June 10 and 11, 1958, to fill the vacancy in the ticket assorter position beginning on June 12, and that they were not available. Even if they had registered for extra work, and they had not, Rule 8 (a) (9) provides that such employees "shall make themselves available to the end that they may fill such positions on short notice."

In conclusion, it is carrier's position, and it has so shown, that (1) Miss Gnann was definitely the senior available qualified furloughed employee in accordance with Rule 8 (a) (4); (2) claimants failed to register for extra work with the officer in charge, and are therefore barred from filing claims for pay account a junior employee being used, as provided in Rule 8 (a) (7); (3) Mrs. Murdock's claim for pay for the last eleven days of the thirteen day vacancy could not possibly be valid, as Rule 8 (a) (5) provides that once a furloughed employee has been placed on a temporary vacancy, he can be displaced therefrom only by an employee to whom a displacing right has accrued; and (4) claimants did not make themselves available to the end that they could fill vacancies on short notice, as required by Rule 8 (a) (9).

For the reasons stated herein, the claim is clearly not supported by any rule or provision of the Clerks' Agreement and should be denied in its entirety. Carrier respectfully requests that the Board so decide.

All pertinent facts and data used by the carrier in this case have been made known to the employee representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 8—Extra Clerical Work—of the Agreement contains the following provisions:

"(a) Except as provided in Rules 7 and 17, preference for extra clerical work on the respective seniority districts will be given to the available senior qualified furloughed clerical employee on such districts, subject to the following:

* * * * *

"(9) When clerical employees have filed their names for extra work they shall make themselves available to the end that they may fill such positions on short notice."

The issue is whether Claimants made "themselves available . . . on short notice" to fill a temporary vacancy.

Because of sick leave granted to a regularly assigned Group 1 key punch operator on June 10, 1958 with a resultant rearrangement of the regular office force the end result was a necessity for Carrier to temporarily fill a position of Group 2 ticket assorter beginning June 12. It is the filling of the end vacancy by a furloughed employee that is involved in this dispute.

Carrier had no knowledge that the vacancy would come into being until June 10. On that date it made several telephone calls in attempts to offer the vacancy to Claimant Murdock, the senior furloughed employee in the classification. Although messages were left Murdock did not respond; nor did she answer a letter addressed to her under that date.

On June 11, having received no response from Claimant Murdock, Carrier wrote Murdock that it was offering the vacancy to another employee.

During the day, on June 11, Carrier made several telephone calls to Claimant Wesson, who was next in order of seniority. Carrier was unable to reach Wesson.

At 4:30 P.M., on June 11, Carrier offered the vacancy to Miss Gnann, who was junior in seniority to Claimant Wesson. Gnann accepted and worked in the position from June 12 to June 30.

On June 13, Claimant Murdock appeared at the office and made demand that she replace Gnann beginning June 16. The demand being denied she filed claim for compensation in the amount earned by Gnann in the period from June 16 to 30.

Claimant Wesson filed a claim for compensation in the amount earned by Gnann on June 12 and 13. She alleges that she was not notified of the vacancy.

As to Claimant Murdock, we find that she did not make herself available within the contemplation of Rule 8 of the Agreement. We find nothing in the contract that vested her with the right to displace Gnann on June 16. We will deny her claim.

As to Claimant Wesson, she has adduced no evidence to rebut Carrier's assertion that it attempted several times on June 11, via telephone, to offer her the vacancy. We find, on the record, that the telephone calls were made; and, Wesson did not make herself available, on short notice, to fill the vacancy within the contemplation of Rule 8. We will deny her claim.

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 13th day of June 1963.