

Award No. 13826

Docket No. CL-14518

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

P. M. Williams, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5450) that:

(a) The Carrier violated the Rules Agreement, effective August 2, 1945, reprints January 16, 1956, and June 1, 1960, particularly Rules 7, 9 and 23, when it failed to assign clerk C. K. Clark to position of Personal Record Clerk, Superintendent's office, Fairbury, Nebraska, Bulletin No. 44, dated November 7, 1962.

(b) C. K. Clark, senior bidder, now be allowed the difference between the rate of Personal Record Clerk, \$451.45 per month, and the position held by C. K. Clark as Relief Position #10, at Belleville, Kansas, the First Trick Yard Clerk, \$425.70 per month, Saturdays and Sundays; Second Trick Yard Clerk, \$422.62 per month, Mondays and Tuesdays; and Third Trick Yard Clerk, \$426.62 per month, Wednesdays, making a difference of about \$26.47 per month due C. K. Clark for the time he has been available.

(c) Richard M. White, seniority date of November 19, 1952, rate \$449.02, and Robert G. Bottger, seniority date July 25, 1956, rate \$442.85, be paid the difference their rate and Personal Record Clerk, \$451.45, in seniority order on dates C. K. Clark was absent account of sickness.

EMPLOYEES' STATEMENT OF FACTS: The positions in the Superintendent's office, October 31, 1962, the day the position of Personal Record Clerk was bulletined, were as follows:

Position	Rate Per Month
Chief Clerk	\$694.47
Mtce. Clerk	479.85
Transportation Clerk	464.44
Personal Record Clerk	451.45
Secretary to Supt.	454.55
Steno-Clerk (Chief Clerk Steno.)	449.02
Steno-Clerk (Divn. Engr. & Dispatcher's Steno)	449.02
Schedule Examiner	515.53
Timekeeper	480.53

Exhibit "A" attached, bulletin advertising Personal Record Clerk, Bulle-

sonal interest in having a certain party return to work and the only way he could accomplish that was to falsify the requirements of a stenographer on the Personal Record Clerk position in Fairbury."

The afore-quoted statement by the General Chairman is sheer fantasy and is utterly false.

The Carrier had valid and sound reasons for the action taken with regard to the personal record clerk position. These have been fully explained to the General Chairman in conference and correspondence, and we invite the Board's attention to Carrier's Exhibit "C", a letter from the Vice President-Personnel to the General Chairman, dated March 18, 1963.

Every handling by the Carrier in this case has been in full compliance with the Agreement between the parties. The Board is well aware that the burden of proof is upon the Organization to show that the Agreement has been violated. This the Organization cannot do. No rule has even been cited by the Organization as having been violated by the Carrier. The reason for this is because there is no such rule. Lacking a rule, being unable to prove a violation, the Organization (for reasons known only to itself) has permitted its protest to degenerate into a vitriolic assailing of personalities—completely apart from any Agreement provisions. This cannot support their claim.

For the information of the Board, Mr. C. K. Clark, the "primary" claimant in this case, resigned from the service of the Carrier, effective December 9, 1963, after having been charged with first degree murder in an incident at Belleville, Kansas. The so-called "secondary" claimants have no valid claim whatever. They would not have been used on dates C. K. Clark was absent account sickness, and their claim cannot even be considered.

The claims have no basis whatever under the rules and must be declined. (Exhibits not reproduced).

OPINION OF BOARD: Prior to the issuance of Carrier's Bulletin No. 43 on October 31, 1962, the stated qualifications for occupying the Personal Record Clerk position in question did not include the requirement that the occupant also have the ability to take dictation. Bulletin No. 43, made the additional requirement for taking dictation a part of the job and it is asserted by Petitioner that Claimant Clark would have, as the senior man bidding for the position, been selected were it not for this new and unnecessary requirement.

We are asked to find Carrier's action violated the Agreement and, as a corollary, to compensate all claimants for the earnings which each would have received but for Carrier's action.

Petitioner does not present us with a proscription in the Agreement which would tend to prevent Carrier's revising the qualification requirements of the position in question, nor is there a presentation of convincing evidentiary facts in this record which would cause us to find that Carrier's action was an abuse of its managerial discretion. Without the presence of one or the other of these material items and to remain consistent with awards of a similar nature of this Division, we will deny the claims.

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

That the parties waived oral hearing;

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August 1965.