

Award No. 14136
Docket No. CL-15189

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5683) that:

1. The Carrier violated the established practice, understanding, provisions and Rules of the Clerks' Agreement when it arbitrarily assigned Position Symbol LIRR No. 93 to a junior employe (M. A. Castillo) to the exclusion of five (5) senior employes, Clerks Austin, Goddard, Vaughan, Mason and Shea, who made request for the position in accordance with the Agreement.

2. The Carrier shall be required to pay senior Clerk Austin, and/or any of the applicants who requested to work and be briefed on the position, as was given to junior employe Castillo, and shall compensate her or them the difference between the rate of Position Symbol LIRR No. 93 and that of the position they held effective February 3, 1964, and each day thereafter until the violations are corrected.

EMPLOYEES' STATEMENT OF FACTS: There is in effect Rules Agreement, effective July 1, 1945 and as amended and the National Agreement signed at Chicago, Illinois, August 21, 1954, covering clerical, other office, station and storehouse employes, between this Carrier and this Brotherhood. The Rules Agreements will be considered a part of this Statement of Facts. Various Rules and Memorandums, therefore, shall be referred to from time to time without quoting in full.

This dispute involves the arbitrary discrimination and disregard of the five senior employes in the Auditor of Disbursements Department who requested to learn and work Clerk Rudolph's position and, instead, the Carrier assigned Clerk Castillo, a junior employe, to learn and work this position.

The Auditor of Disbursements knew prior to January 20, 1964 that Clerk Rudolph was going on vacation from February 3rd to 21st, 1964, and also knew she was taking an additional week off without pay from February 24th to March 2, 1964, with permission by the Carrier.

2. Employees have the opportunity of qualifying on other positions in the Accounting Department under the provisions of Rules 2-A-3(c) and 3-H-1, or by bidding on a guaranteed extra list position.

3. No vacancy existed in clerical position LIRR-93-AD prior to February 3, 1964. The vacancy occurred commencing February 3, 1964, and was filled by the only clerk who made application for it under Rule 2-A-1(e). The Carrier thus discharged its obligation under the Rules.

4. The Carrier's action was not arbitrary, but was required by Rule 2-A-1(e).

5. The Carrier did not violate established practice.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimants are senior employees in the office of the Auditor of Disbursements at Jamaica, New York. Clerk Rudolph, the incumbent employee on Position Symbol LIRR No. 93, was scheduled to take her vacation from February 3 to February 21, 1964. In addition, the Carrier permitted her to extend it for one week, without pay, until March 2, 1964. Thus, forewarned of the impending temporary vacancy, the Carrier on January 20, removed Castillo, a junior clerk, from his regular position and assigned him to learn the duties involved in Clerk Rudolph's position. Thereupon, the Claimants herein, five employees with greater seniority than Castillo, submitted written requests that they be accorded similar consideration. Three of these requests are herein included:

"Jamaica, New York
January 22, 1964

Mr. Frank O'Connor
Office Manager, Auditor of Disbursements
Long Island Rail Road, Jamaica, New York

Dear Mr. O'Connor:

I understand that Michael Castillo is learning Dorothy Rudolph's position.

I would like very much to be given the opportunity, inasmuch as I am a senior clerk.

Sincerely,

/s/ Althea Austin"

"Room 504, L.I. RR
Jamaica, New York
January 23, 1964

Mr. Frank O'Connor
Office Manager

I request the opportunity to be instructed on the position Dorothy Rudolph now holds.

I register this request according to my seniority standing as the person who is being instructed is considerably my junior.

Very truly yours,

/s/ I. L. Goddard"

"January 23, 1964
Room 504

Mr. Frank O'Connor
Office Manager

I request the privilege of being taught Dorothy Rudolph's position.

She must impart the knowledge to someone; and since the person to whom she is imparting that knowledge is junior to me by a good many years; I base my request.

Very truly yours,

/s/ Mary Boone Mason"

On January 27, 1964, the senior employees were then notified by the Carrier that it had discontinued using Clerk Castillo for the purpose stated in their letters. However, on February 3, 1964, Castillo was thereafter assigned to work Rudolph's position for the period from February 3 to February 28, inclusive.

Claim was thereupon submitted by the Organization alleging a violation of the Clerks' Agreement. The Carrier denied the claim on the ground that Castillo had filed a written request for this assignment pursuant to Rule 2-A-1(e), and, also, on his knowledge of the position.

In its submission, the Carrier avers that Rule 2-A-1(e) is the only rule that has any application to the instant dispute. Hence, our analysis will be confined to that phase. The cited rule contained in the effective Agreement between the parties reads as follows:

"(e) Positions or vacancies of thirty (30) days' or less duration may be filled without bulletining. The senior qualified available employee requesting, in writing, such position or vacancy, or requesting, in writing, a bulletined position or vacancy, pending assignment of a successful applicant, will be assigned, except where agreement under Rule 5-C-1 requires the use of an extra employee, provided this will not entail additional expense to the Company."

It is obvious that the significant words of said rule applicable herein are those which state that "the senior qualified available employee requesting, in writing, such position or vacancy * * * will be assigned * * *." The Carrier argues that when the vacancy actually occurred on February 3, 1964, only Clerk Castillo, the junior employee, filed a written request to cover the vacancy. It further contends that at no time did the Claimants comply with the provisions of Rule 2-A-1(e) by requesting in writing to work this position. On the other hand, the following document is alleged to have been received from Castillo:

"February 3, 1964

T. P. Moore, Aud. of Disb.
Jamaica Station Building
Jamaica Station

Dear Sir:

In accordance with Rule 2 A1-E, allowing coverage of an absent employee's job, I request to cover Mrs. D. Rudolph's job during her absence, due to vacation, starting February 3, 1964.

Thank you,

/s/ Michael A. Castillo"

This places in issue the question whether the parties ever agreed upon the specific form or words that an employee was required to utilize in order to exercise the privileges bestowed by said rule. The answer is in the negative. Hence, we need to determine whether the written requests submitted by the senior employees were sufficient to place the Carrier on notice that these employees were seeking the opportunity to fill the vacancy. These were filed by them when they first became aware of the impending vacancy. They submitted their requests upon observing that Castillo was moved from his regular position and assigned to learn the duties of the soon-to-be vacant job. In the absence of any agreement between the parties designating the precise form to be used by an employee seeking to fill a temporary vacancy, we hold that the senior employees complied with the rule, under the circumstances indicated herein. It is, therefore, our considered opinion that these senior employees were evincing a desire to be considered for the temporary vacancy, and that the Carrier was obligated to act accordingly.

Insofar as the question of qualifications is concerned, there are sufficient facts in the record to warrant the conclusion that Austin, the Senior Clerk, was sufficiently qualified to merit consideration.

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 Agreement was violated.

AWARD

Claim sustained as to Senior Clerk Austin.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of February 1966.