

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

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

SOO LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5566) that:

(1) The Carrier violated the current rules and working conditions Agreement, particularly Rule 15, when it failed and refused to promptly transfer Messrs. D. E. Berendsen and James Spanbauer to positions to which they had been assigned by bulletin.

(2) The Carrier shall now be required to compensate claimant D. E. Berendsen for eight hours' pay at \$19.4224 per day for September 18, 19, 20, 21, 22, 25, 26, 27, 28 and 29, 1962, and claimant James Spanbauer for eight hours' pay at \$19.0824 per day for September 17, 18, 19, 20, 21, 24, 25, 26, 27 and 28, 1962, the rate of the positions from which they were improperly withheld, in addition to any compensation they may have received on the dates claimed.

EMPLOYEES' STATEMENT OF FACT: The Carrier issued vacancy bulletins numbers 862 and 867 among others, on September 7, 1962. Vacancy bulletin number 862 (Employees' Exhibit A) advertised a vacancy for a position of Yard Clerk at Neenah, Wisconsin, with hours of assignment from 7:00 A. M. to 4:00 P. M., and a rate of pay of \$19.4324 per day. Vacancy bulletin number 867 (Employees' Exhibit B) advertised a vacancy for a position of General Clerk at Neenah, Wisconsin, with hours of assignment from 9:00 A. M. to 6:00 P. M., and a rate of pay of \$19.0824 per day.

Carrier issued assignment bulletin (Employees' Exhibit C) on September 14, 1962, wherein awards of assignment were made on vacancy bulletins number 862 and 867 among others. Claimant D. E. Berendsen was assigned by bulletin to the position advertised in Carrier's vacancy bulletin 862 of September 7, 1962 and claimant Spanbauer was assigned by bulletin to the position advertised in Carrier's vacancy bulletin 867 by Carrier's assignment bulletin of September 14, 1962.

The claimants were denied their right to occupy the positions to which they had been assigned by bulletin and were required to continue occupancy

On September 7, 1962, Vacancy Bulletin No. 862 was issued soliciting bids for a temporary position of yard clerk at Neenah, rated at \$19.4324 per day, assigned hours of 7:00 A. M. to 4:00 P. M., Thursdays through Mondays.

On this same date, Vacancy Bulletin No. 867 announced the establishment of a temporary General Clerk's position at Neenah, with daily rate of \$19.0824, hours of 9:00 A. M. to 6:00 P. M., and work week of Monday through Friday.

Both bulletins closed at 9:00 A. M., September 14, 1962, and that same date it was announced that D. E. Berendsen was the successful bidder on Vacancy Bulletin No. 862 and James Spanbauer on Bulletin No. 867.

Mr. Berendsen was a regularly assigned yard clerk at Neenah on a position carrying the same rate of pay and work week as the temporary position on which he had bid. Only the assigned hours differed, Mr. Berendsen being on a night job.

Mr. Spanbauer held a regular position of Integrated Data Processing Clerk at Neenah at a daily rate of \$19.6724, or 59 cents per day more than the temporary position on which he had bid. The work week and assigned hours of the two positions were identical.

During the period the two new temporary positions were under bulletin, Carrier filled the positions, commencing Monday, September 10, 1964, by hiring two clerks who had been furloughed from the North Western. Because of the uncertainty of the duration of the C&NW strike and the anticipation that it would shortly end, Carrier continued the two new employees on the temporary jobs until the positions were discontinued with the end of the strike, September 28, 1962, rather than disrupt its force by placing claimants on the positions, thus necessitating the bulletining of their positions, training others for these jobs and filling them on a temporary basis.

Effective Thursday, September 13, 1962, the work week of the newly created temporary yard clerk's position was changed to Tuesdays through Saturdays.

During the period involved in this claim, Claimant Berendsen accrued 15 hours and 5 minutes overtime at penalty rates in addition to his regularly assigned hours and Claimant Spanbauer accumulated 35 hours and 15 minutes overtime. During this same period, the temporary yard clerk's position was worked a total of 3½ hours overtime, and the temporary general clerk none.

Copies of schedule agreement between the parties to this dispute, effective August 1, 1955, and supplements thereto, are on file with the Board and are made a part of this record by reference.

OPINION OF BOARD: The Carrier issued vacancy bulletins 862 and 867 on September 7, 1962. 862 advertised a vacancy for a position of Yard Clerk at Neenah, Wisconsin, with hours of assignment from 7:00 A. M. to 4:00 P. M. 867 advertised a vacancy for a position of General Clerk at the same location, with hours of assignment from 9:00 A. M. to 6:00 P. M.

On September 14, 1962, Claimant D. E. Berendsen was assigned to vacancy advertised in 862 and Claimant James Spanbauer to that advertised in 867.

They were denied the right to occupy these positions and never did occupy them. These positions were abolished on October 13, 1962.

Rule 15, Bulletins, provides that an employe awarded a bulletined position or vacancy will be transferred promptly to such assignment after issuance of the assignment bulletin.

The issue in this case turns on whether Carrier violated the requirement to transfer Claimants to their new assignments "promptly." The word "promptly," although not capable of exact measurement, requires action without undue delay and what constitutes undue delay depends on the circumstances of the case. Claimants had the right to expect appointment quickly. The vacancies existed and they had been appointed and were ready to serve. At this point, the burden is upon the Carrier to show that the delay was due to the force of circumstances.

Carrier explains that a strike on the Chicago and North Western Railway created the need for these positions and that pending the advertising and awarding of the positions, they were filled by the hiring of two clerks on furlough from the C&NW. After the Claimants were awarded the positions, Carrier expected that the C&NW strike would soon be over and that it would be disruptive to put Claimants on the job only to have to return them to their old jobs afterwards. Carrier, therefore, held Claimants off the jobs and retained the C&NW clerks, until the strike ended on September 28.

Thus, despite the fact that Claimant had a contract right to these jobs, Carrier held them off while permitting new, temporary employes to occupy them while it awaited an eventuality it could not predict. We think this was a clear violation of Article 15. Delay occasioned by the hope that the need to fill these jobs will abate, cannot be deemed justified.

Carrier asserts that Claimants suffered no damage by being held off these jobs in that each Claimant held a regular job at a higher rate of pay than that of the temporary jobs they were awarded, and that during the period in question Claimants worked considerable overtime which augmented their earnings, so that they earned more in the aggregate than they would have if they had been assigned the awarded positions.

In our opinion, Claimants did suffer damages on those days they would have worked but, in fact, did not work because they were improperly held off their rightful positions. As we stated in Award 13908 the general rule of damages is inadequate to cover the case where an employe works more days or different days from those required on the position to which he is entitled. Each day on which an employe is idle when he should have been permitted to work is a work day lost. Each day on which he earns less than he would have earned if he had been permitted to work is a day he has sustained a money loss.

Claimants are entitled to compensation for each day as claimed less the amount each actually earned that day, treating each day as a unit for computation purposes.

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 Carrier violated the Agreement.

AWARD

Claim sustained to extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1966.