

Award No. 15045
Docket No. CL-15547

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5758) that:

1. Carrier violated the current Clerks' Agreement on September 3, 1964, when it awarded Position No. 15-Mail Clerk in the Disbursements Accounting Department at Detroit, Michigan, to a junior applicant, Mr. Thomas Rigley, instead of the senior applicant, Mr. Peter J. Sullivan.

2. Carrier further violated the Clerks' Agreement on September 22, 1964, when it refused Claimant Peter J. Sullivan's written request for an investigation account unjust treatment accorded him by Carrier.

3. Carrier shall now compensate Mr. Peter J. Sullivan for all monetary losses sustained on September 3, 1964, and each work day subsequent thereto until October 7, 1964, when he was awarded a subsequent vacancy on Position No. 15-Mail Clerk.

EMPLOYEES' STATEMENT OF FACTS: Under Bulletin No. 113, dated August 31, 1964 (Employees' Exhibit No. 1), Carrier Posted Position No. 15, Mail Clerk, Disbursements Department, Seniority District No. 50, rate of pay \$18.0864 for applications.

Two bids were submitted on this position. One from Claimant Peter J. Sullivan, who holds seniority rights in Revenue Department, Seniority District No. 54 as a Mail Clerk, rate of pay \$17.8464, and holds a seniority date with the Carrier of June 4, 1964.

The second bid was submitted by Thomas Rigley, who holds seniority rights in General Accounts Department, in Seniority District No. 273, as a Clerk-Typist, rate of pay \$19.5954, and holds a seniority date with the Carrier of July 9, 1964.

"BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS

December 28, 1964
File: 39-354
Your File: 8325-1(329)

Mr. H. A. Sanders, Vice Pres. and Gen. Manager
Grand Trunk Western Railroad Company
131 West Lafayette Boulevard
Detroit, Michigan 48226

Dear Sir:

Referring to your letter of December 22, 1964, confirming conference held December 18, 1964, at which time the claim of Peter J. Sullivan for compensation covering wage loss suffered when on September 3, 1964, Carrier awarded vacancy on position of No. 15 Mail Clerk, Disbursement Accounting Department, to a junior employee, Mr. Thomas Rigley, instead of senior applicant, Mr. Sullivan, was discussed.

Your letter of December 22nd reaffirmed Carrier's previous declination of December 14, 1964.

We have made every effort to resolve this dispute on the property; however, as it is apparent this is not possible, I am arranging to submit the case to the Third Division, National Railroad Adjustment Board, for decision.

Yours very truly,

/s/ James E. Darling
General Chairman

cc: Mr. W. W. Brendle, LC, No. 354
Mr. Mel Lektzian, CBT"

Copies of the Clerks' Working Agreement, effective January 15, 1955, are on file with the Third Division.

OPINION OF BOARD: On August 31, 1964, a clerical vacancy in Seniority District No. 50 was bulletined.

No bids were received during the bulletin period from clerks holding seniority in District No. 50

Two applications were received from clerks in other districts, one from Claimant, who had a June 4, 1964 seniority date in his district, and one from a clerk with a July 9, 1964 seniority date.

The officer in District 50 considered the applications and on September 3 awarded the position to the applicant with July 9, 1964 seniority.

This resulted in the claim, alleging Claimant had preference on a seniority basis over the other applicant.

Rule 18, cited by Petitioner in support of Claimant's contention, reads:

"Employees filing applications for positions bulletined on other districts will, if they possess sufficient fitness and ability, be given preference on a seniority basis over non-employees and/or employees not covered by this agreement."

There is no ambiguity in this rule, and we do not find that it supports the Claim.

The rule, as written by the parties, does not give preference on a seniority basis to one applicant over another as between applicants holding seniority in other districts.

That preference is plainly limited to applicants from other clerical districts "over non-employees and/or employees not covered by this agreement."

The only restriction in Rule 18 is that the officer in filling the vacancy in his district will give first consideration or preference to applicants holding clerical seniority in other districts over applicants holding no clerical seniority in any district.

In this case, the employee awarded the position in District No. 50 was an applicant holding clerical seniority in another district.

Therefore, there was no violation of Rule 18 and the claim must be denied.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of December 1966.

**LABOR MEMBER'S DISSENT TO AWARD 15045,
DOCKET CL-15547**

Award 15045, Docket CL-15547, is in error when applied to the facts of record, the controlling Agreement, and prior Awards.

In addition to being unable or unwilling to properly construe the Agreement, it is quite obvious that the Referee didn't even consider all of the issues before him. Even a cursory reading of the Statement of Claim and the Opinion should cause anyone to wonder what happened to Claim 2, because it isn't even discussed or alluded to in the Opinion. It was simply ignored by the Referee even after reargument.

Claim 2 is not the only thing the Referee ignored. For example, Rules 5 and 34 obviously did not receive any consideration; yet, they were constantly relied on by the Employees. They, along with Rule 18, read as follows:

**"RULE 5.
PROMOTION, ASSIGNMENTS AND DISPLACEMENTS**

Employees covered by these rules shall be in line for promotion. Promotion, assignments and displacements shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

NOTE: The word 'sufficient' is intended to more clearly establish the right of the senior employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability."

"RULE 18. FILING APPLICATIONS

Employees filing applications for positions bulletined on other districts will, if they possess sufficient fitness and ability, be given preference on a seniority basis over non-employees and/or employees not covered by this agreement."

"RULE 34. GRIEVANCES

An employee who considers himself unjustly treated, otherwise than covered by these rules, shall have the same right of investigation, appeal and representation as provided in Rules 26, 27, 28, 31 and 32, if written request which sets forth the employee's complaint is made to his immediate superior within sixty (60) days of cause of complaint."

To arrive at such an erroneous decision as here the Referee necessarily had to:

- (1) Find that Rule 5, which covers assignments, was inapplicable to this particular assignment or did not exist; and,

- (2) Find that Rule 18 alone specifically covered the particular case and that the phrase therein reading "... preference on a seniority basis ..." was meaningless, or did not apply unless "non-employees and/or employees not covered" had also sought assignment to the position in question.

The above theories would have been wrong for the obvious reasons that they would have been absurd, and there is no rule, either in the Agreement or in those concerning construction of Agreements, which would support such findings.

In addition to the above, the Carrier's summary denial of Claimant's timely request for a hearing under Rule 34, to which Carrier replied, "... I see no purpose for an investigation to be held and therefore your request for same is respectfully declined." was an obvious violation of the Agreement.

Clearly, the facts of record, agreement rules, and prior Awards, including 10180 and 10689, required a sustaining Award.

I therefore dissent to this highly erroneous decision.

D. E. Watkins
Labor Member
12-22-66