

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Herbert J. Mesigh, Referee

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**PARTIES TO DISPUTE:**

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

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5645) that:

- (1) Carrier violated the Clerks' agreement when it refused to allow Mrs. Agnes Brown to exercise her displacement rights over a junior employee;
- (2) That Carrier now be required to place Mrs. Brown on the position of Assistant Station Accountant with seniority and all other rights unimpaired;
- (3) That Carrier be required to compensate Mrs. Brown a day's pay for each day lost at the rate of the Assistant Station Accountant position from October 28, 1963 until she is rightfully awarded the position.

**EMPLOYEES' STATEMENT OF FACTS:** On October 16, 1963, Bulletin No. 23 was posted abolishing the position of Re-Audit Clerk held by Mrs. Brown from March 18, 1963, to the abolishment time of October 28, 1963. (See Employees' Exhibit A.) On the same day a position was put up for bids under the title of Comptometer Operator Clerk, at the rate of pay of \$20.29 per day, Bulletin No. 24. (See Employees' Exhibit (B).) On October 17, 1963, Mrs. Agnes Brown made application for this position listing a seniority date of September 18, 1961, (See Employees' Exhibit (C).) You will also note on Mrs. Brown's application she filed a copy of certificate that she had completed a course at Felts and Tarrent Comptometer School. Bulletin No. 24 stated that bids would be received up to 8:00 A. M., Monday, October 21, 1963, with the effective date of the position being October 16, 1963.

On October 17, 1963, before the time was up on Bulletin No. 24 and the same day Mrs. Brown made application for the position, she (Mrs. Brown) received a letter from Mr. R. W. Chapman, Assistant Comptroller (Head of the Accounting Department) that her bid for this position was not accepted. (See Employee Exhibit (D).) After her bid was not accepted, on October 23, 1963, Mrs. Brown wrote a letter to Mr. Chapman and requested that she be allowed to displace a junior employee holding the position of Assistant Sta-

ant's General Chairman next appealed the decision of Assistant Comptroller Chapman to the Director of Labor Relations J. M. Godwin on January 6, 1964, said appeal being received on January 8, 1964. On February 17, 1964, Carrier by its Director of Labor Relations directed a letter to the General Chairman of the Brotherhood of Railway and Steamship Clerks declining the claim on faulty procedural grounds. Copy of Carrier's letter of February 17, 1964 is attached as Exhibit E. At 4:00 P. M., February 19, 1964, General Chairman Cobean called by long distance Director of Labor Relations Godwin and wanted to know if it was Carrier's wish to dispose of this case based on contention outlined in Carrier's letter of February 17, 1964. He was advised that the claim had not been progressed in accordance with the agreement or the Railway Labor Act and unless he could get Mr. Coad, Comptroller, to extend the time limit as authorized in Section 1(b) of Article V of the National Agreement of August 21, 1954, adopted on this Carrier February 9, 1955, the Carrier would base its defense of this claim as outlined in letter of February 17, 1964. He then stated he would ask for a conference with Mr. Coad on Monday, February 24, 1964 after which he would want to talk with the Director of Labor Relations. The Director agreed to meet with him on February 24, 1964.

At 11:15 A. M., February 24, 1964 General Chairman Cobean called on Director of Labor Relations Godwin and stated in conference that he had discussed the Brown matter with Mr. Coad and that Mr. Coad declined to discuss the merits of the claim stating that the claim had not been properly processed and was therefore outlawed under Article V of the National Agreement of August 21, 1954. Mr. Cobean was then advised that Carrier would stand on position stated in letter of February 17, 1964 but that Carrier would give further consideration to extending the time limit. Further consideration was given the matter and on March 5, 1964 the Carrier directed a letter to General Chairman Cobean declining to grant his request for additional time to progress the claim. See Exhibit F.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Carrier moves that the Board dismiss the claim as the dispute was not handled in the "usual manner" as required by Section 3, First (i) of the Railway Labor Act and by the applicable time limit provision of the February 9, 1955 Agreement (adopting provisions of the National Agreement of August 21, 1954).

On November 11, 1963, Claimant filed claim with the Assistant Comptroller for each day she was held off the position of Assistant Station Accountant when not permitted to exercise displacement rights for this position. Claim was denied by the Assistant Comptroller on December 13, 1963. He was notified by the General Chairman on January 6, 1964 of the rejection of his decision and on the same date the General Chairman appealed to the Director of Personnel. On February 17, 1964, the Director of Personnel advised the General Chairman that said claim had not been properly progressed in accordance with Section 3, First (i) of the Railway Labor Act and Agreement rules pertaining to the handling of claims and grievances.

Section 3, First (i) of the Railway Labor Act provides in part:

"The disputes . . . shall be handled in the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes. . . ."

Article V, Section 1(b) of the August 21, 1954 agreement provides in part:

"(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed. . . ."

Bulletin No. 666 was issued June 19, 1959 by Comptroller D. W. Coad outlining the appeal procedure for the processing of claims or grievances in the Accounting Department. (See Carrier's Exhibit G.) The initial claim is to be presented to the Assistant to Comptroller, then if disallowed by him, appeal as follows:

" . . . if the claim or grievance is appealed such appeal must be made in writing within sixty (60) days of receipt of notice of disallowance to the undersigned (D. W. Coad, Comptroller) . . . further appeal may then be made to the Director of Personnel . . ."  
(Emphasis ours.)

Although the Organization denies that Bulletin No. 666 is the correct appeal procedure or the "usual manner" in progressing claims on the property, we find sufficient evidence in the record which attests that the Organization was put on notice by proper service, said notice being incorporated into the files of the Local Chairman of the Organization. The Organization bypassed or skipped a step in the appeal procedure, namely Comptroller Coad, contrary to Bulletin No. 666 dated June 19, 1959.

Because of the Organization's failure to handle the claim in the "usual manner" as required by Section 3, First (i) of the Railway Labor Act and to comply with the time limit provisions of the August 21, 1954 Agreement, the claim must be dismissed.

**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 Employee involved in this dispute are respectively Carrier and Employee 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 Claim is barred.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1967.

**LABOR MEMBER'S DISSENT TO AWARD NO. 15183  
(DOCKET CL-15130)**

The Opinion in this Award reads in part as follows:

"Although the Organization denies that Bulletin No. 666 is the correct appeal procedure or the 'usual manner' in progressing claims on the property, we find sufficient evidence in the record which attests that the Organization was put on notice by proper service, said notice being incorporated into the files of the Local Chairman of the Organization. The Organization bypassed or skipped a step in the appeal procedure, namely Comptroller Coad, contrary to Bulletin No. 666 dated June 19, 1959." (Emphasis mine.)

It is the contention of the Organization that only the highest designated officer of the Carrier is the proper officer to notify the Organization of any change in the so-called "Order of Appeal" and that such notice must be given to the highest designated officer of the Organization, namely, the General Chairman.

Bulletin No. 666 referred to in the above-quoted paragraph was addressed to the employees in the Accounting Department, with a copy furnished to the Local Chairman, but Carrier failed to give the General Chairman a copy.

We fully recognize that the Carrier has the right to designate the Order of Appeal and, likewise, to change the Order of Appeal. However, such should only be done in accordance with the Railway Labor Act, namely, by notice from the highest designated officer to the highest designated officer authorized to confer.

To this extent the Referee erred, but such erroneous decision will not alter the clear provisions of the Railway Labor Act.

For the above reasons, I dissent.

**C. E. Kief**  
Labor Member  
1-23-67

CEK/bjs