

Award No. 16532
Docket No. CL-16704

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Milton Friedman, Referee

PARTIES TO DISPUTE:

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

**MISSOURI PACIFIC RAILROAD
(Gulf District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6085) that:

1. The Carrier violated the Clerks' Agreement by failing and refusing to fill the positions of Line Desk Clerk Nos. 044 and 045 pending assignments.

2. Messrs. J. H. Lucas, Jr., H. H. Hopper, Jr., and A. Andreolli be compensated for 8 hours each day as follows:

J. H. Lucas - Job No. 044 - April 26, 27 and 28, 1965

J. H. Lucas - Job No. 045 - May 2, 1965

H.H.Hopper - Job No. 044 - April 24 and 25, 1965

A. Andreolli - Job No. 045 - April 22, 23, 24, 25, 26, 27 and 28, 1965

A. Andreolli - Job No. 044 - April 22 and 23, 1965

EMPLOYES' STATEMENT OF FACTS: On April 21, 1965 the following positions were advertised by bulletin, but were not filled pending assignment:

BULLETIN NO. 95

Line Desk Clerk (045) - \$21.89
3:00 P. M. - 11:00 P. M.

BULLETIN NO. 94

Line Desk Clerk (044) - \$21.89
7:00 A. M. - 3:00 P. M.

Time slips were turned in by Claimants and were declined by the Superintendent on May 10, 1965. Employees' Exhibits Nos. 1, 2 and 3.

10. Claimants were working regularly on positions other than those under advertisement. Carrier did not have any extra or furloughed employees available to fill the advertised positions. It would have been necessary to double other employees who had already worked eight hours that day, or forty hours that week, and pay time and one-half rates for service which Carrier did not need and did not require to be performed. Employees do not have a right to two positions at the same time, nor do they have a right to perform service which Carrier does not require be performed.

11. Carrier's position in declining these claims was fully set forth in letter dated December 30, 1965 addressed to General Chairman T. G. Brown, which reads as follows:

"December 30, 1965
D 280-523

Mr. T. G. Brown
General Chairman - Clerks
1303 Rosalie, Room 4
Houston, Texas 77004

Dear Sir:

Please refer to your letter of November 12, 1965, File G-3005, appealing the following claims for 8 hours because two Line Desk Clerk positions were not filled at San Antonio:

J. H. Lucas - Job No. 044 - April 26, 27 and 28, 1965

J. H. Lucas - Job No. 045 - May 2, 1965

H. H. Hopper - Job No. 044 - April 22 and 23, 25, 26, 27 and 28, 1965.

A. Andreolli - Job No. 045 - April 22, 23, 24, 25, 26, 27 and 28, 1965

A. Andreolli - Job No. 044 - April 24, 1965

Vacancies existed on these two positions on claim dates and since the extra board was exhausted and there were no furloughed or extra clerks available to perform service, the positions were blanked.

It has long been recognized that in the absence of the regularly assigned incumbent of a position, there is no requirement that the position be filled. It is equally well recognized that no one has a right to the performance of work which Carrier does not desire be performed.

In view of these facts, claims are without merit, and are respectfully declined.

Yours truly,

/s/ B. W. Smith"

OPINION OF BOARD: Carrier advertised Positions 044 and 045 by bulletin on April 21, 1965. On the dates claimed the positions were not filled. Claimants allege violation of Rule 10 of the Agreement which provides:

"Bulletined positions will be filled temporarily pending an assignment, and, in the event no applications are received from employees

covered by this agreement, the assignment may be made by appointment."

Rule 10 is explicit in requiring the positions to be filled once bulletined. Moreover, the issue was before the Board many years ago, and was decided in Award No. 1754 in favor of the employees. Nothing which has been presented in this case provides any reason for reversing Award No. 1754.

Indeed, in its submission to the Board, Rule 10 was not discussed by Carrier, although it was the basis upon which the claims had been filed. Instead, Carrier directed its defense at the issue of whether it could blank an unneeded position. Nothing in this Award compels Carrier to fill any vacancy, with one exception, and that is the requirement in Rule 10 that "bulletined positions will be filled temporarily. . . ."

Rule 25(b) was also cited by the Employees in their submission, but we see no relevance in that citation since it governs situations in which there is no extra board, and there is an extra board here. Thus, this Award is predicated solely on the mandate of Rule 10 and its earlier application in Award No. 1754.

One Claimant, H. H. Hopper, Jr., was not available for one hour on April 24, 1965, and his claim accordingly is sustained for seven hours on that date.

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

H. H. Hopper, Jr.'s claim on April 24, 1965 is sustained to the extent of seven hours on that date. All other claims are sustained as filed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August 1968.

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