



Award No. 17065
Docket No. CL-17849

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6488) that:

(1) The Carrier violated the current Clerks' Agreement when it failed and refused to accord Mr. J. F. Geer, Chief Billing Clerk at Providence Freight Office at Providence, Rhode Island, preference in the assignment to position of Assistant Agent at Providence Freight Office over an employe of another craft who held no rights under the Clerks' Agreement.

(2) Mr. J. F. Geer, now be allowed \$3.0446 per day, the difference between his rate as Chief Billing Clerk and the rate of pay of the Assistant Agent commencing July 1, 1967 until corrected for each date the violation continues.

(3) Mr. J. J. McElroy now be allowed \$1.7509 per day, the difference between his rate as I.B.M. Clerk and the rate of pay of the Chief Waybill Clerk commencing July 1, 1967 until corrected for each date the violation continues.

EMPLOYES' STATEMENT OF FACTS: Due to the retirement of Mr. A. T. Benson, Agent, Providence Freight Office, Mr. R. J. Soltz, Assistant Agent in Providence Freight Office was promoted to the position of Agent July 1, 1967.

Both Mr. A. T. Benson and Mr. R. J. Soltz are carried on the January 1, 1967 roster of the Office of Freight Agent - Providence and Pawtucket, Rhode Island, in the following manner:

No. 4 - Benson, A. T. 12-13-17 Msgr Agent 3-20-19

No. 23 - Soltz, R. J. 9-25-37 Msgr Assistant Agent 5-29-37

Note B - Promoted

hood of Railway Clerks, copy of which is attached hereto as Carrier's Exhibit A, and by reply dated January 2, 1959 from Mr. Farquharson, copy of which is attached as Carrier's Exhibit B.

With the retirement of Agent A. T. Benson, Mr. R. J. Soltys was advanced from the position of Assistant Agent to that of Agent. Effective July 1, 1967 Mr. C. R. Brightman was appointed to the position of Assistant Agent at Providence, vice Mr. Soltys. Mr. Brightman had been Agent at Woonsocket, Rhode Island, which position is not subject to any labor agreement, and he continues to have jurisdiction over the agency at Woonsocket, together with his duties as Assistant Agent at Providence.

Under date of July 25, 1967, claim was initiated with Agent Soltys by Division Chairman Samson of the Clerks, in behalf of Chief Billing Clerk, John F. Geer, at Providence Freight, alleging that Mr. Geer should have been appointed to the position of Assistant Agent, and that if he had been so appointed, it would have created a vacancy in the Agent's office and Mr. John J. McElroy, who was working as I.B.M. Teletype and Yard Clerk in the General Yard Office at Providence, would have been recalled to fill such vacancy.

The claim for Mr. Geer requests \$3.0446 per day, Monday through Friday, which is the difference between the rate of Assistant Agent (\$28.2555) and the rate of Chief Billing Clerk (\$25.2109), and an additional \$28.2555 for each Saturday, the claim to commence July 1, 1967 and to continue until the alleged violation of the agreement is corrected.

The claim for Mr. McElroy requests \$1.7509 per day, Monday through Friday, which is the difference between the rate of the Chief Billing Clerk (\$25.2109) and the rate of his present position of I.B.M. Teletype and Yard Clerk (\$23.46), also commencing July 1, 1967.

The claim alleged violation of Rules 1, 2, 11, 13, 15, 24, 27, 28, 29, 34 and 35 of the Clerks' Agreement.

Freight Agent Soltys issued a denial on August 16, 1967 and the claim was progressed through the usual avenue up to and including the undersigned.

Copy of appeal by General Chairman S. M. Adinolfi, dated October 9, 1967, is attached as Carrier's Exhibit C.

Denial decision by the undersigned, dated December 7, 1967, is attached as Carrier's Exhibit D.

Copy of the Agreement, effective September 15, 1957, between the parties is on file with this Board and is by reference made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute arises by virtue of Carrier's appointment of a member of the Telegraphers' Organization to fill the position of Assistant Freight Agent at Providence, Rhode Island.

When the agent at Providence Freight Office, A. T. Benson, retired, the Assistant Agent of said office, R. J. Soltz, was promoted to the position, leaving a vacancy in the Assistant Agent's position in said Providence Freight Office.

Claimant applied for the vacant Assistant Agent's position at Providence; however, Carrier appointed Charles R. Brightman, who was Agent at Woonsocket, Rhode Island, and who was a member of the Transportation Communication Employees Union.

Claimants rely principally on the violations of Rules 1, 2 and 13 of the Agreement, and allege that Rule 1, Scope Rule, of the Agreement was violated when Carrier appointed an employee not under the Clerks' Agreement to fill the position in question; that Rule 1(b) prohibits the removal of the Assistant Agent's position from the application of these rules; that Rule 1(d) of Agreement gives clerical employees priority and legal precedence in exercise of rights to positions within the scope of the Agreement; that Rule 2 of the Agreement definitely establishes that the position of Assistant Agent belongs to clerical workers; that Rule 13 provides for clerical employees promoted to excepted or official positions with protected seniority.

Carrier's position is that there is nothing in the Agreement which makes it mandatory for an appointee to the Assistant Agent's position at Providence to come from the craft or class of Clerks; that Carrier complied with Rule 1(d) of the Agreement when it gave prior consideration to the applicants for said position, including Claimant, in filling said vacancy and that the successful appointee was the best qualified person to fill said position.

First, the record discloses that the Carrier's Vice President, Labor Relations and Personnel, J. J. Gaherin and the Organization's General Chairman, R. D. Farquharson, by exchange of letters, dated December 23, 1958 and January 2, 1959, agreed that "the position of Assistant Agent at Providence Freight will be included in the Agreement as an excepted position similar to the positions at Boston and Harlem River shown in Rule 1."

Thus, as such excepted position, the Assistant Agent's position at Providence is subject to c(3) of the Agreement, the pertinent part thereof providing: (c) Exceptions: (3) Only Rules 1, 2, 11, 13, 15, 24, 27, 28, 29, 30, 34 and 35 shall be applicable to all of the following positions.

Therefore, by Agreement the parties hereto mutually agreed that the position of "Assistant Agent at Providence Freight" became part of the Agreement, subject only to Rules 1, 2, 11, 13, 15, 24, 27, 28, 29, 30, 34 and 35.

The Assistant Agent's position then is subject to Rule 1 of the Agreement, in particular 1(b), the pertinent part thereof, which provides:

"Positions named above in this Rule 1 belong to employees covered by this agreement and nothing herein shall be construed to permit the removal of such positions from the application of these rules by transfer to another craft except by agreement between the parties signatory hereto."

By the mutual acts of the parties hereto, the position of Assistant Agent at Providence was brought under and made subject to the Clerks' Agree-

ment, and Carrier was compelled to assign an employe covered by the Clerks' Agreement, and, therefore, Carrier violated the Agreement, in particular Rule 1(b) when it transferred said position to another craft, in this instance, the Telegraphers'.

In regard to the claim of J. J. McElroy, I.B.M. Clerk, no proof was adduced showing that he is the senior employe entitled to Claimant's present position and that he is fit and able to handle the position; therefore, his claim will 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 Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim (1) and Claim (2) sustained and Claim (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of April 1969.