

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

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

SEABOARD COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6666) that:

(1) Carrier violated the Rules of the Agreement when they did not call Clerk C. T. Barber to work an advertised vacancy on August 5, 6, 9, 10 and 11, 1968; but, instead allowed a junior employee, by rearranging forces, to work.

(2) Clerk C. T. Barber be paid eight (8) hours at the punitive rate of \$25.88 for August 5, 6, 9, 10 and 11, 1968.

EMPLOYEES' STATEMENT OF FACTS: Mr. C. T. Barber, hereinafter referred to as Claimant, holds clerical seniority on District 2, Raleigh Division, in which Raleigh, North Carolina, is located.

On May 7, 1968, the Carrier posted a Clerks' Bulletin, Advertisement No. 102, new position, Vacation Relief Clerk. This position to work a number of positions while regular assigned employees were on vacation. The locations for the position to work were Yard Office and Roundhouse Office, Raleigh, North Carolina. (Employees' Exhibit "A"). On June 5, 1968, the Carrier posted a Clerks' Bulletin, Notice of Assignment, assigning P. J. Michaels to the position of Vacation Relief Clerk, Yard Office and Roundhouse, Raleigh, North Carolina, Advertisement No. 102. (Employees' Exhibit "B.")

On July 17, 1968, the Carrier posted a Clerks' Bulletin, Advertisement No. 149, vacancy of H. B. Perry, Utility Clerk, Yard Office, Raleigh, North Carolina. On August 7, 1968, Clerks' Bulletin was posted which cancelled Advertisement No. 149 and readvertised the same position, Advertisement No. 166. On August 20, 1968, Notice of Assignment was posted assigning J. H. Stegall, Jr. to Advertisement No. 166. (Employees' Exhibits "C," "D" and "E").

On August 21, 1968, Claimant filed claim with General Yardmaster A. B. Austin at Raleigh, North Carolina. General Yardmaster Austin declined the claim on August 22, 1968, and I quote below the correspondence exchanged:

and, furthermore, assuming without in any way conceding that the claim of Clerk Barber has merit, the record clearly shows that had the swap not taken place, Clerk Barber with a seniority date of March 14, 1966, would have been the junior of 8 clerks to be called in seniority order. The 7 senior clerks are as follows:

J. E. Coore
C. M. Walters
D. G. Miller
T. W. Coble
M. F. Ueltschi
J. L. Robertson
C. T. Bishop

Thus, as shown from this record, under no circumstances would Clerk Barber been called and used.

For the reasons expressed by Mr. Sale to you in conference, and those stated herein, the claim on behalf of Clerk Barber is without merit and it is declined."

OPINION OF BOARD: The record indicates that Carrier assigned Clerk P. J. Michaels, seniority date May 31, 1968, to a position of Vacation Relief Clerk advertised in its Bulletin No. 102, on June 5, 1968. This position was scheduled to provide vacation relief on a crew clerk position held by C. T. Bishop on August 5, 6, 9, 10 and 11, 1968, but due to the inexperience of the Vacation Relief Clerk the Carrier arranged to allow the regular incumbent to work during his scheduled vacation period. In accordance with the request of P. J. Michaels, the Carrier permitted him to fill a temporary vacancy at the yard office, which was currently on bulletin, during the week he was an unassigned employee.

Claim was subsequently made in behalf of C. T. Barber, crew clerk, seniority date March 14, 1966, who occupied a regular assignment, on the premise the Carrier violated the Agreement between the parties when it failed to use him on the vacancy filled by the unassigned clerk, P. J. Michaels.

Upon close scrutiny of the Agreement effective January 1, 1968, especially Rule 6—Exercise of Seniority; Rule 15—Temporarily Filling Buletned Positions; Rule 18—Use of Furloughed Employees; Rule 22—Absorbing Overtime; and Rule 33—Trading Positions we have not found a violation.

While the Carrier relies on Rule 15 in temporarily filling an assignment we have searched the record before us and the Agreement of the parties to find a rule which would sustain the position of the Claimant. We have been unsuccessful.

To be entitled to damages the Claimant must prove a violation of the Agreement. There is no proof by the Claimant that he had a superior right to the vacancy here involved. Therefore, we must deny the claim.

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;