Award No. 18026
Docket No. CL-18461

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 EMPLOYES

WESTERN MARYLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6686) that

1. Carrier violated the Clerk's Agreement when it improperly awarded Relief Position No. 31, advertised on Bulletin No. 9, dated May 21, 1969 and that

2. Clerk M. J. Marques shall now be allowed 4 hours pay plus one dollar for the dates of June 1, 4, 5, 6, 7, 8, 9, 11, 12, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 1968.

EMPLOYES' STATEMENT OF FACTS: Claimant occupied an extra board position at the Port Covington Yard Office, Baltimore, Maryland, with a seniority date of July 19, 1962, at the time of the violation of the agreement.

On May 20, 1968, Trainmaster K. A. Willett, Port Covington, Baltimore, Maryland issued a memorandum of instructions to Yardmasters, which, among other things, indicated that Mr. F. E. Kozel would be on vacation May 23 to 26, 1968 and would work E. L. Mentzer's turn effective 11:00 P. M., May 27, 1968, until E. L. Mentzer returned to duty, taking Saturday and Sunday relief days.

On May 21, 1968, Carrier issued advertising bulletin Number 9, displaying thereon, among others, position #31, Yard Clerk.

Evidently Mr. F. E. Kozel bid on the position as awarding bulletin Number 10, dated May 29, 1968 awarded it to him. The Claimant also bid on position #31, Yard Clerk, and this fact is not disputed by the company.

Exception was taken by the Claimant to the awarding of the position to employe Kozel and claims were entered by him and denied by Trainmaster K. A. Willett. Appeal was made by the organization in its letter dated September 21, 1968 to the System Superintendent.

The exception was premised upon the undisputed fact that employe Kozel had been and was working as a yardmaster, filling various yardmaster va-

cancies caused by vacation and illness, since April 21, 1968. As factual information for the record, Mr. Kozel holds seniority date of February 2, 1966 on the Yardmaster's Roster and performs service as a Yardmaster.

Under date of November 18, 1968, Carrier rejected the appeal of the organization.

Appeal of that decision was made under date of January 4, 1969 and it too was denied by the carrier.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: This case involves the awarding of clerical position No. 31 at the carrier's Port Covington, Maryland (Baltimore) yard office. This position was advertised on Bulletin No. 9 dated May 21, 1968, a copy of which is attached as Carrier's Exhibit "A." The claimant, M. J. Marques, bid on five of the advertised positions, with No. 31 as his third choice and No. 33 as his fourth choice. Copies of his application forms are attached as Carrier's Exhibit "B." Clerk Frank Kozel bid on three positions, with Position No. 31 as his first choice. A copy of Mr. Kozel's applications are attached as Carrier's Exhibit "C." Messrs. Marques and Kozel have seniority standing on the Clerks' seniority roster as follows:

	No.	Seniority Date
F. E. Kozel—	117	8- 2-54
M. J. Marques—	149	7-19-62

Since Mr. Kozel was the senior applicant for position No. 31, he was awarded that position in accordance with Rule 10 which reads:

"RULE 10 — Promotions, Assignments and Displacements —

Employes covered by these rules shall be in line for promotion. Promotions, assignments and displacements shall be based on seniority, fitness and ability — fitness and ability being sufficient, seniority shall prevail, except as otherwise provided in Agreement identified as Personal Office Force and Excepted Positions List (Appendix No. 1).

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

(Exhibits not reproduced.)

OPINION OF BOARD: The issue to be decided here is a simple one: Does an employe who has seniority on the Clerks' Roster have the right, while occupying the position of a substitute Yardmaster, to bid on a clerical position?

Rules 8 and 10 are operative here:

"SENIORITY — OFFICIAL AND PARTIALLY EXCEPTED POSITIONS

Rule 8.

(a) Employes filling official, personal office force, excepted or Yardmaster positions who were promoted to such a position prior

to the effective date of this agreement shall retain and continue to accumulate seniority on those rosters where their names are carried as of the effective date of this agreement.

(b) Employes promoted to official, personal office force, excepted or Yardmaster positions on or after the effective date of this agreement shall retain and continue to accumulate seniority on all seniority rosters where they held seniority at the time of promotion.

(c) Such promoted employes do not have the right accorded by Rule 11 to bid for advertised vacancies; however, if removed from such a position they may exercise displacement rights as provided for in Rule 9.

PROMOTIONS, ASSIGNMENTS AND DISPLACEMENTS

Rule 10.

Employes covered by these rules shall be in line for promotion. Promotions, assignments and displacements shall be based on seniority, fitness and ability — fitness and ability being sufficient, seniority shall prevail, except as otherwise provided in Agreement identified as Personal Office Force and Excepted Positions List. (Appendix No. 1)

The word 'sufficient' is intended to more clearly establish the right of the senior employe to bid in a new position or vacancy where two (2) or more employes have adequate fitness and ability."

The Petitioner contends that Clerk Kozel was ineligible to bid for an advertised vacancy since he was working as a substitute Yardmaster at the time of the advertisement.

The Carrier contends that the fact Clerk Kozel was filling a Yardmaster's position on an extra basis during the absence of the Yardmaster because of illness did not constitute a forfeiture of his right to exercise clerical seniority.

After thorough analysis of the record we find that the memorandum from the Trainmaster to the Yardmasters dated May 20, 1968, did not constitute a promotion of Mr. Kozel to the general Yardmaster position, but was simply issued for operational reasons.

Our study of the Agreement between Western Maryland Railway Company and the Brotherhood of Railway and Steamship Clerks, Revised Effective April 1, 1967 does not reveal a prohibition making a substitute Yardmaster, so assigned because of an operational vacancy, ineligible to bid an advertised vacancy. An employe who has seniority on the Clerks Roster does have the right, while occupying the position of a substitute Yardmaster, to bid on a clerical position.

Upon the basis of the foregoing findings, the Claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds: