

Award No. 18516
Docket No. CL-18931

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6811) that:

1. The Carrier violated the Rules of the Agreement extant between the parties when it failed to call Mr. L. Foster, Car and Train Desk, for extra work in assisting regular assigned Relief Train Desk Clerk No. 1 using a junior clerk instead.

2. Mr. L. Foster shall now be allowed eight (8) hours pay at time and one-half for each day June 16, 17, 18, 23, 24, 30, July 1, 2, 7, 8, 9, 12, 13, 14 and 15, 1969, a total of fifteen (15) days.

EMPLOYEES' STATEMENT OF FACTS: On date of May 26, 1969, Clerk D. E. Crawford was assigned by Bulletin No. 80-69 to Job No. 806 - Relief No. 1 at Oroville, California (Employes' Exhibit A). This position relieved Train Desk Clerk on five days per week; Saturday and Sunday 8:00 A. M. to 4:00 P. M., Monday and Tuesday, 4:00 P. M. to 12 Midnight. Wednesday 12 Midnight to 8:00 A. M. On the dates of June 16, 17, 18, 23, 24, 30, July 1, 2, 7, 8, 9, 12, 13, 14 and 15, 1969, extra help was required to assist Relief Clerk Crawford in the performance of his duties. In each and every instance a junior clerk was used, Mr. Foster being the senior clerk at that station. (Employes' Exhibit B.)

A claim was submitted with the Carrier for each day of the violation. (Employes' Exhibit C.) These were declined by the Carrier's Timekeeper on July 8 and 22, respectively. (Employes' Exhibit D.) An appeal was subsequently made to Superintendent J. C. Luser (Employes' Exhibit E), and declined by him on August 8, 1969. (Employes' Exhibit F.) The dispute was then appealed to highest officer of the Carrier authorized to handle on the property, Mr. W. A. Tussey, Manager of Personnel, and declined on October 22, 1969. (Employes' Exhibits G and H.)

(Exhibits not reproduced.)

"RULE 29.

Employees covered by these rules shall be in line for promotion. Promotion, assignments, and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. When an employe junior to other applicants is assigned to a bulletined position, the senior employes making application will be advised the reason for their non-assignment if they request such information in writing and file it within 15 days from date of assignment.

NOTE: The word 'sufficient' is intended more clearly to 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."

"RULE 31(f).

Employees will be selected to fill positions pending assignment by bulletin and all short vacancies in accordance with Rule 40(d) or Rule 29."

"RULE 38.

After service of one year in a seniority district, application for transfer to another seniority district may be made; ability and fitness being sufficient employe will be transferred when there is a vacancy in preference to hiring a new employe. His full seniority shall not apply in the district to which transferred until he is assigned to a regularly established bulletined position.

NOTE: The word 'application' as used in this Rule includes both an application for a future vacancy or an application for an existing vacancy under bulletin.

When applications for transfer from two or more employes are under consideration, the senior employe will be given preference providing he possesses sufficient fitness and ability."

(Exhibits not reproduced.)

OPINION OF BOARD: On June 16, 1969, D. E. Crawford began working Job No. 806 - Relief No. 1, which relieved the incumbents of three Train Desk Clerk positions as follows:

Saturday and Sunday — 8 A. M. to 4 P. M.

Monday and Tuesday — 4 P. M. to 12 Midnight

Wednesday — 12 Midnight to 8 A. M.

On the dates of claim, Carrier felt that Mr. Crawford needed help and training in the performance of his duties. On each of their respective rest days the regular incumbents of these three positions were utilized in the training and performance of duties of Mr. Crawford. Mr. Foster, senior to the regular incumbents, contends he should have been utilized for the performance of this work and training.

Petitioner contends that the provisions of Rule 31 — Notice of New Position or Vacancy, and Rule 29 — Promotions, Assignments — support the claim of Mr. Foster. However, we find no such support in these rules. There were no new positions or vacant positions as contemplated by Rule 31; and, likewise, with respect to the provisions of Rule 29, there was no promotion to be obtained by the regular occupants of the regular positions encompassed in this relief position.

Mr. Crawford, the assigned incumbent of the relief position, was under pay at all times. Carrier determined that he needed assistance and training in the performance of the work on the various shifts within his relief assignment and that the regular incumbents of the positions involved in his relief assignment should be the individuals qualified to assist and train him. Having found no violation of the cited rules, we 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;

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; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1971.