



Award No. 18554

Docket No. CL-18794

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Thomas Rimer, Jr., Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6774) that:

1) Carrier violated the Clerks' Rules Agreement at Milwaukee, Wisconsin on the following days: December 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 22, 23 and 24 1968 when it failed to allow employe D. LeRue to occupy position of Relief Road Caller in Seniority District No. 22.

2) Carrier shall now be required to compensate employe LaRue for one (1) day's pay for each day held off his assigned position, and one (1) day's pay for each day forced to work his former position No. 09600 Road Caller, 3 P. M. to 11 P. M., rest days Tuesday and Wednesday, at penalty rate.

EMPLOYEES' STATEMENT OF FACTS: Carrier had in effect at Muskego Yard, Milwaukee, Wisconsin, the following Road Caller positions:

No.	Assigned Hours and Days	Rest Days	Occupant
0959	7 A. M.- 3 P. M. Tuesday thru Saturday	Sun.-Mon.	R. Richter
0960	3 P. M.-11 P. M. Thursday thru Monday	Tues.-Wed.	D. LaRue
0961	11 P. M.- 7 A. M. Saturday thru Wednesday	Thurs.-Fri.	P. Arveson
Relief			
0959	Sunday and Monday		
0960	Tuesday and Wednesday		
0961	Thursday	Fri.-Sat.	L. Baltutis

The Friday rest day relief on Position 0961 is provided by Relief Caller and Time Revisor position.

signed on December 6, 1968, and which also prevented Employees Richter and Baltutis from assuming the positions for which they had made application and were assigned by bulletin.

Starting with December 6, 1968, Claimant LaRue filed time claims because he was not promptly transferred to the position to which assigned and required to work his old position, and he continued to file such claims during the period of the instant claim, i.e., December 6 to December 24, 1968; however, during that period, Claimant LaRue received the same rate of pay on his old position as he would have received on his new position.

It was only after the Carrier was able to hire a new employe, P. Wittig, on December 21, 1968, and break him in as a caller whereby he was placed on the position occupied by Claimant LaRue (Road Caller Position 0960) on December 26, 1968, thereby making it possible for Claimant LaRue to commence filling the position to which assigned and for Employees Baltutis and Richter to do likewise, thus all three men were, effective December 26, 1968, released from the positions they were occupying and transferred to the positions they had made application for and assigned thereto by bulletin.

There are no claims in behalf of Employees Richter and Baltutis before your Board, nor were there any claims progressed on the property in their behalf as a result of Carrier's actions in the instant case in requiring these men to remain on each of their former positions for a period even longer than that required of Claimant LaRue.

There is attached as Carrier's Exhibit "G" copy of letter written by Mr. L. W. Harrington, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of July 30, 1969.

(Exhibits not reproduced.)

OPINION OF BOARD: Beginning November 21, 1968, when employe Richter, a Road Caller, exercised his seniority to displace another employe as Chief Yard Clerk Position 08700 it became necessary to bulletin his open position. When the successful bidder, L. Baltutis, was assigned that position, his position was bulletined (November 29, 1968) and was filled by the senior applicant D. LaRue, who then was assigned by bulletin on December 6, 1968. However, the Carrier held all the involved employes on their former positions until December 26, 1968 when transfer was effected of those employes involved, D. LaRue is the sole Claimant here, alleging violation of the Agreement, Rules 2, 3, 7 and 9 quoted below:

"RULE 2 — SENIORITY DISTRICTS — ESTABLISHED

(e) Employees who have sufficient fitness and ability will in accordance with the rules be entitled to clerical positions in accordance with their clerical date and will be entitled to non-clerical positions in accordance with their non-clerical date * * *

RULE 3 — SENIORITY

(f) Seniority rights of employees covered by these rules may be exercised only in cases of vacancies, new positions or reduction of forces, except as otherwise provided in this agreement.

RULE 7 — PROMOTION

Employees covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

RULE 9 — BULLETINED POSITIONS

(a) New positions or vacancies (except those of thirty (30) calendar days or less duration) will be promptly bulletined in agreed upon places accessible to all employees affected for a period of five working days, exclusive of Sundays and holidays. Employees desiring such bulletined positions will file their applications with the official whose name is signed to the bulletin within that time. A bulletin of assignment listing names of all applicants and designating the name of the successful applicant shall immediately be posted at all places where the position was bulletined.

(e) An employee awarded a bulletined position will be transferred promptly to such assignment * * *

The Board can find no violation of Rules 2, 3, or 7. The substance of the claim rests upon 9(e) alone and requires a determination of whether the Carrier was justified in deferring the transfer of the Claimant from his old position to the new position for which he was the successful applicant for the period from December 6 to December 24, 1968.

The Organization claims the mandate of 9(e) to transfer "promptly" must be taken in its most literal sense, which is to say "immediately," and the claim requests a compensatory remedy beginning December 6, 1968, the date on which LaRue was assigned to the new position by bulletin.

The Carrier argues that it acted in conformity with 9(e) under the circumstances, in that the transfers were effected promptly, and were made as soon as could reasonably be expected. It is contended that the test of "reasonableness" must be applied to the requirements of 9(e) and that such is the intent of the Agreement. In support of its position, it points to the fact that the series of bulletins for openings which ended with D. LaRue's assignment to a new position on December 6, then and only then could it be known that it would be necessary to employ and train an individual to augment the calling operation created by the loss of Richter, the successful applicant as Chief Yard Clerk which started the chain reaction. This is succeeded in doing by December 26 on which date the transfers were made.

Contrariwise, the Organization argues that the need for an additional employee for the calling operation was known from November 11, 1968 when Richter bid on the Chief Yard Clerk position, and certainly no later than November 21 when he was assigned such position by bulletin. The Carrier should then have sought to hire and train the individual known to be ultimately required. Until such trained employee was available, the Carrier should and could have covered the calling operation with the existing work force scheduled on an overtime basis, after making the transfers with the promptness required of it under the terms of Rule 9(e).

Certainly, the word "promptly" as it appears in 9(e) is an inexact expression susceptible of a variety of interpretations. This Board believes that it was not the intent of the parties to connote that word with the word "immediately" but rather that transfers should be made without undue delay, applying the test of "reasonableness," looking to the circumstances present in

any given situation. The same language was similarly construed in Award No. 18 by Special Board of Adjustment No. 452.

On its face, it would appear that a delay extending from November 11, 1968, when Richter bid outside the calling operation, or even November 21 when he was declared assigned to such new position, to December 26, 1968 in effecting the transfer of all three employes is unreasonable, if one is to agree with the Organization that the Carrier should then, at the outset, have sought to add the necessary personnel.

In its defense of this charge of negligence, the Carrier points to the fact that, following LaRue's assignment to his new position by bulletin on December 6, it then became necessary to bulletin his vacated position which was done on that date. On December 16 it was declared in bulletin 212 that there were no applicants for the Road Caller position 0960 to be vacated by LaRue. Accordingly, it was after this bulletining that the Carrier set about to hire and train additional personnel. Thus, by its statement of the chronology of events, the delay in making transfers extended from December 16 to December 26, 1968.

One fact is abundantly clear on which both parties agree. The Claimant did not suffer any monetary loss by reason of the delay. During the period from December 6 to December 24 he received the same rate of pay on his old position as he would have received on his new position. In fact, more days of work opportunity were available to him on his old position than on the new during this period.

Rule 9(e) does not provide for a penalty of punitive damages nor are they called for here by a flagrant, and unexplained delay by the Carrier in making the transfers, if indeed the Board has the authority to assess such damages.

In the absence of uncontroverted proof based on a preponderance of the evidence put forward by the Organization, and looking at the entire record before us, this Board must find that the Carrier acted with reasonable promptness in transferring the Claimant to the job he was awarded through bid.

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 13th day of May 1971.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.