



Award No. 19001
Docket No. CL-19213

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6907) that:

(a) Carrier violated rules of the Clerk's Agreement in the Auditor of Passenger Accounts Seniority District, when on September 25, September 25, 1967 and until violation is corrected; and,

(b) J. G. Bengtson shall now be paid the difference between his regular rate of \$23.4805 and \$23.8270 for each work day beginning September 25, 1967 and until violation is corrected; and,

(c) D. M. Fagan shall now be paid the difference between his regular rate of \$23.4805 and \$23.8270 for each work day beginning September 25, 1967 and until violation is corrected; and,

(d) J. S. Phillips shall now be paid the difference between his regular rate of \$23.4805 and \$23.8270 for each work day beginning September 25, 1967 and October 31, 1967 and the difference between his regular rate of \$23.1970 and \$23.8270 for each work day beginning November 1, 1967 and until the violation is corrected; and,

(e) J. G. Bengtson, D. M. Fagan and J. S. Phillips shall now each be paid eight (8) hours for each day September 30, October 7, October 14 and October 21 at the rate of time and one-half the daily rate of \$23.8270 as result of this violation.

EMPLOYEES' STATEMENT OF FACTS: There is in effect between the parties an Agreement dated November 1, 1963, referred to as the Clerk's Agreement, copy of which is on file with this Honorable Board and by reference thereto is made a part of this submission.

Effective October 12, 1964, Position 381 titled Train Earnings and Statistics was established in the Auditor of Passenger Accounts Seniority District, Topeka, Kansas. This position is still in existence and regularly assigned to C. A. Coulter, rate \$23.8270.

without bulletining as provided in Rule 11-A by advancing employees desiring to be so advanced, in accordance with the principles set forth in Rule 7. All changed assignments resulting therefrom will be promptly posted, in one assignment bulletin, in places accessible to all employees in the affected seniority district for five (5) consecutive days (closing at 12:00 Noon the sixth day) during which period employees having seniority in the district may file bids for any or all such positions with the designated official and state preference when bidding on more than one position. After the expiration of the bulletin period any displaced employee shall have the right to return to his former position or displace on any position on the original assignment bulletin provided such rights are declared within five (5) consecutive days after date bulletin closes. If no bids are received for a position listed on the assignment bulletin Rule 11-F shall govern.

Accounting—

Auditor of Disbursements	Topeka
Auditor of Freight Accounts	Topeka
Auditor of Passenger Accounts	Topeka
Machine Bureau	Topeka
Disbursements Department	Amarillo
Freight and Passenger Department	Amarillo
Machine Bureau	Amarillo
Disbursements Department	Galveston
Freight and Passenger Department	Galveston
Machine Bureau	Galveston
Superintendent of Car Service	Topeka
General Freight Claim Agent's Office	Topeka

RULE 32 — OVERTIME AND CALLS

32-G. In working overtime before or after assigned hours employees regularly assigned to class of work for which overtime is necessary shall be given preference, i.e.:

(1) Occupant of position to have prior rights to overtime work on his position.

(2) If more than one employee is regularly assigned to a class of work, the senior available employee in that class of work will have prior rights to the overtime work.

(3) If none of the employees are available as provided in (1) and (2) above, the senior available qualified employee at the point who has served notice in writing of his desire will then have prior rights to the overtime work.

NOTE: This principle shall also apply to working on holidays."

(Exhibits not reproduced.)

OPINION OF BOARD: Beginning September 25, 1967, Carrier assigned 3 higher rated employees, more senior to the Claimants, to assist the Statis-

tics Clerks in the preparation of a special statement for presentation to the Interstate Commerce Commission in connection with Carrier's reduction or restriction of passenger service to make up for substantial revenue lost through the discontinuance of all but two Railway Post Office cars. Another higher rated and senior employe was assigned to assist in the preparation of the statement on September 26 and a fifth also senior and higher rated was assigned on October 21. During the period September 25 through October 21 two more Statistics Clerks were assigned to work on Saturday and received 24 hours pay at time and one-half. Despite the help provided the work could not be completed until November 27, 64 days following the assignment of the employes to assist.

Petitioner relies on Rule 11, 5, 7 and 32, contending that by the removal of the 5 employes from their regular positions on the 9th floor of the same building and assigning them to work on this special project on the 8th floor Carrier, in effect, created 3 new positions. The Petitioner contends further that by the failure to bulletin the new positions allegedly created, Carrier interfered with Claimants rights under Rule 5 — Exercise of Seniority, Rule 7 — Promotions, Assignments, Displacements and Rule 32-G — Assignment of Overtime. It is Petitioner's contention that had the jobs been created and thereafter bulletined Claimants would have been the rightful owners of the positions — 3 positions identical to the 2 positions the 5 employes were assigned to help — and therefore would have been assigned the overtime which occurred during the period set out in the Claim. Petitioner places special emphasis on Rule 11. This will be discussed further below.

Carrier concedes that the 5 were assigned as alleged and defends its action by relying on Rule 37 — Preservation of Rates. Carrier also relies on a letter of understanding dated December 9, 1942. Carrier further contends that it was under no obligation under the agreement to create new positions.

The record reveals that the 5 employes assigned continued to receive their higher rate of pay while assigned to the preparation of the special statement as well as overtime when it occurred. The record further reveals that the positions of these employes, all of whom are employed in the same seniority district as the Statistics Clerks they were assisting, were not vacated. The record reveals they spent 844 hours of the 1764 hours worked by them during the period on the special assignment. The remaining 920 hours were spent performing regular routine duties.

Returning to Rule 11, the Petitioner contends that by sheer weight of the hours away from their regular duties the Carrier perforce created 3 new positions. Carrier states that it was under no contractual obligation to create new positions as there is no requirement in the agreement that it do so. It states further that it did not create new positions thus there was no need to "advance" employes or to bulletin such non-existent positions.

Rule 11-A, entitled "Bulletins," reads in relevant part as follows:

"Except as otherwise provided in Rule 11-C, new positions, permanent vacancies and temporary vacancies of more than fifteen (15) work days known duration in Group 1 or 2 will be promptly bulletined in established places accessible to all employes affected in the seniority district where they occur. Unless * * *

However, there is another rule applicable to Auditor of Passenger Accounts Seniority District, the Seniority District involved herein, known as

Rule 11-C, entitled "Filling Positions General Offices," which reads in relevant part as follows:

"In the seniority districts listed below, so long as all positions in such district are confined to a single office, department or location, and as may hereafter be agreed upon, positions may be filled without bulletining as provided in Rule 11-A by advancing employees desiring to be so advanced, in accordance with the principles set forth in Rule 7. All changed assignments resulting therefrom will be promptly posted, in one assignment bulletin, in places accessible to all employees in the affected seniority district for five (5) consecutive days (closing at 12:00 Noon the sixth day) during which period employees having seniority in the district may file bids for any or all such positions with the designated official and state preference when bidding on more than one position. After * * *"

Carrier's response to Petitioner's demand that it "advance" employees in accordance with Rule 11-C is met with the statement that "lacking any desire on the part of Management to create a new position, there can obviously be no such advancement." Rule 11-C is a special Rule covering the General Offices including the one involved herein which is located in Topeka, Kansas. It is clearly an exception to Rule 11-A which requires bulletining in temporary vacancies of more than 15 days known duration. Rule 11-C clearly gives Carrier the right to fill the position first and to bulletin later. There is no time specified in Rule 11-C as there is in 11-A. It is an entirely different rule specially for General Offices, as involved herein.

The Petitioner has raised the question: Did Carrier because of the length of time the 5 employees spent on the project actually create new positions although it had no intention of doing so? Once having established that Carrier would have had to fill the positions and thereafter bulletin them under 11C. No cases have been cited or urged by the parties which meets this point squarely. Thus it is concluded that it is a case of first impression.

It is well settled that this Board cannot add to or subtract from agreements. It is equally well settled that the mere fact that an employee works at two places does not result in the creation of a new position. Award 16217, 13201 and others. Petitioner has filed to point out where in the agreement Carrier must create new positions, Carrier says there is no such requirement. We have examined the cases cited and the agreement and are unable to find anything to support Petitioner's contention. Thus we conclude that no new positions were established under Rule 11-C. Having so concluded we further conclude that there was no need for bulletining under said Rule. Having so found and as the 5 were paid pursuant to Rule 37 and without any regard to the letter of understanding of December 9, 1942, which we consider superseded by the current agreement, we shall 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 Employees involved in this dispute are respectively Carrier and Employees 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 11th day of February 1972.