

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21841
Docket Number CL-21808

John P. Mead, Referee

(Brotherhood of **Railway**, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employes**
PARTIES TO DISPUTE: (**The National Railroad** Passenger Corporation

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-8224), that:

(1) Carrier violated the terms of the current Agreement **particularly Rules 10, 5, 1, 2 and 6**, as well as others, **when** it failed to **allow** Mr. **Hedlund** to assume the full responsibilities of the position of cashiering in the cage as ticket clerk, the position he **bumped** on to December 16, 1974.

(2) Mr. **Hedlund** shall now be **paid** the difference in rate of pay he will. be paid, the higher rate of the two positions and **any additional** personal expense, plus **\$3.00** per **day** for the period withheld from the new **assignment** beyond the time limit, above described, for each and every **day** this violation is allowed to continue.

OPINION OF BOARD: Upon abolishment of his Ticket Clerk position at Pasadena in December 1974, claimant exercised seniority to bump into a position at **Los Angeles Union Passenger Terminal**. The carrier contends that he displaced into a "Ticket Clerk" position while the **claimant** thought he was acquiring a position which handled **all** monies similar to Cashier. Claimant was assigned to ticket selling with the hours and days off he desired. The carrier contended that, although sane Ticket Clerks handled **more money** than others, there was no position of Cashier **and** no position of Ticket Clerk handling all monies.

Claimant believes the denial of a cashier-type position entitles him to pay differential, additional personal expenses and liquidated **damages** while the violation continues.

The **single** issue here is factual - whether there was **an** identifiable position other than "Ticket Clerk" into which **claimant** displaced. If so, applicable contractual provisions operate to award **him** the position as his seniority rights and qualifications were not questioned by the carrier.

Examination of the record, including prior awards cited by the parties, leads this Board to the conclusion **that** the position into which **claimant** displaced was identified simply as Ticket Clerk. The record lacks sufficient **proof** in support of claimant's argument. It contains no evidence of the duties being performed by the employee whom **claimant** displaced, nor any evidence of the **way** the duties of the position were described at the time the displaced employee entered it, by bid or otherwise. In the **absence** of such evidence, it is presumed that the position conformed to those previously bid at Los Angeles, **and** the evidence shows them to have been bid as "Ticket Clerk" with duties described broadly, in these **general** terms: Ticketing, ticketing accounting, information on rates, schedules, etc., **and** other duties as assigned."

Claimant relied heavily upon language in R. E. Riddle's response to the initial penalty claim as indicating Riddle's **acknowledgment** that there was in existence a Ticket Clerk position which was responsible for handling all monies. While such an interpretation of the letter is possible, another reasonable interpretation is that Riddle was merely describing **claimant's** desires. Later carrier correspondence contradicts claimant's interpretation of **the Riddle** letter. In any event, this Board must look for better evidence than statements of advocates made subsequent to the filing of the claim. **Equally** lacking in probative **value** is the carrier's point that the position of **"Cashier"** was not established until November 1, 1975, as such action does not rule out the possibility that the position actually **existed** prior to being so labelled.

Award **No. 5306** (Referee Wyckoff) in Docket **No.** CL-5243 has been cited by claimant as **analogous**. This Board has given it careful consideration **and** believes the facts to be at variance with the **instant** case. In **5306** the **record contained** considerable evidence of duties being performed in the job **immediately** prior to the claim, which evidence clearly indicated a separation of duties within the general job classification. In the present case, such evidence is lacking.

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

~~Claimant~~ has not provided sufficient evidence to support his ~~claim~~.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, ~~Illinois~~, this 6th day of January 1978.