

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10126) that:

(a) Carrier violated the provisions of the current Clerk's Agreement at Topeka, Kansas beginning August 1, 1985, when it established PAD Position No. 5001, and

(b) Claimant Connie Clever shall now be compensated eight hours pay for each work day beginning August 1, 1985, at the rate of pay \$98.25 per day Claimant is off-in-force, and

(c) Claimant Rhonda D. Wilbur shall now be compensated difference in pay of her present position and the established PAD position as long as the violation occurs, and

(d) Carrier shall now remove occupant of established PAD position to her former position in the Communications Department Seniority District."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This dispute concerns the Carrier's filling of a partially excepted "PAD" position in the General Manager's Office-Eastern Lines Operating Seniority District, where both Claimants held seniority. The Rules concerning PAD positions are in Supplement A and read as follows:

"2. Partially excepted positions will be identified as 'PAD' or 'PADD' positions and will not be subject to the promotion, assignment or displacement rules ('PADD' positions not being

subject to the overtime rules) of the Clerks' Agreement, but the incumbents of partially excepted positions are subject to the other rules thereof, except as otherwise agreed. Assignments to vacancies on these positions may be made without regard to the promotion rule and without bulletining, with Management having the right to select the employees to be assigned thereto. Assigned employees cannot be displaced from these positions through the exercise of seniority rights.

6. Employees assigned to 'PAD' or 'PADD' positions shall have not less than one year of seniority under the Clerks' Agreement, unless otherwise agreed to by the parties.

In filling 'PAD' or 'PADD' positions, a notice will be posted in established places accessible to all employees in the seniority district where the position is located for a period of five consecutive days from the date of the notice. The notice shall show location, title, position number, brief description of duties, rate of pay, hours of service and rest days of the position to be filled.

Employees having one or more years of clerical seniority may, if they so desire, make written application for the position to the person whose signature appears on the notice. Such written application must be received not later than 12:00 (noon) the first normal work day after the close of notice.

In selecting an occupant for the 'PAD' or 'PADD' position, preference will first be given to those qualified employees who make written application for such position.

In the event a qualified employee does not make written application for the position to be filled, the position may then be filled by the selection of any qualified clerical employee from any seniority district having not less than one year of seniority under the Clerks' Agreement, unless otherwise agreed to by the parties.

NOTE: It is understood management has the right of selection."

At the outset, the Board finds no basis to support the Organization's view that a position was eliminated and the same position "re-established" as

a PAD position. There is support for the Carrier's contention that the PAD position was independently established.

The Carrier followed the posting procedure required under the second paragraph of Section 6. Eleven employees made request to be assigned to the position. Of these, seven were from the General Manager's Office-Eastern Lines Seniority District, including the two Claimants herein. The position was awarded to an employee from a different seniority district.

There is no dispute whatsoever that the Carrier has the "right of selection" under the applicable rules. The narrow difference between the parties is whether the Carrier is obligated to make such selection initially from qualified employees within the seniority district in which the position exists or whether there is no such restriction.

The Carrier argues that the required posting within the seniority district is for convenience only and in no way limits the range of the Carrier's selection. The Organization argues that, while the Carrier retains the right of selection, the Carrier has conceded priority to those found qualified within the seniority district.

As noted by the Organization, all but the first paragraph of Section 6 was added in 1977. This provides for posting "in the seniority district where the position is located" and preference for qualified employees "who make written application." This alone would not preclude selection initially from outside the seniority district. However, the provision must be read and understood in its entirety. The final paragraph states that when no qualified employee has made written application, "the position may then be filled" (emphasis added) by a qualified employee from "any seniority district." This clearly lends credence to the meaning advanced by the Organization.

The Carrier notes previous occasions when no protest was made when selections were made from outside the seniority district. This is not of precedential value, however, since it is unknown whether qualified employees within the district had made application or whether they wished to protest their failure to be selected.

The remedy, however, is more difficult. The Carrier disputes that Claimant Wilbur was qualified. Further, the Carrier clearly retains the right of selection at least among those qualified in the district. Within this limitation, the Board may not direct the selection of one of the applicants.

As to Claimant Cleaver, she claimed the right to Wilbur's position instead of being placed off-in-force. Since there is no certainty that Claimant Wilbur would have been selected, her claim is moot. It is also noted she was returned to active employment shortly after the incident.

The Award will sustain only Paragraph (a) of the claim and will direct the Carrier to make a selection from among applicants within the seniority district, if any are found to be qualified, with appropriate remedy as to difference in pay, if any.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1988.