

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30793
Docket No. CL-31036
95-3-92-3-873

The Third Division consisted of the regular members and in addition Robert W. McAllister when award was rendered.

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Duluth, Missabe & Iron Range Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of
the Organization (GL-10888) that:

1. Carrier violated the entire Agreement, but specifically Rules 6, 9, 12, and 13 of the Clerks' Rules Agreement when it failed and/or refused to bulletin the vacancy of the Operations Reporting Clerk and left it blank.
2. Carrier shall now pay the Senior Available Clerk eight (8) hours at the punitive rate of the Operations Reporting Clerk for the days of January 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31; February 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28; March 1, 4, 5, 6, 7, 8, and 11, 1991, account Carrier refused to bulletin the vacancy and left it blank."

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 employee within the meaning of the Railway Labor Act as approved June 21, 1934.

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

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

On January 7, 1991, Clerk Jean Breemeersch was awarded the Chief Clerk position at the Carrier's Duluth Ore Docks. This vacancy was the result of the regular incumbent being granted a ten week leave of absence. The same day, the Carrier posted a bulletin abolishing Breemeersch's Operating Reporting Clerk position effective January 11, 1991. The abolishment bulletin, however, was rescinded on January 10, 1991. Thereafter, Breemeersch's position remained unfilled until she returned to it on March 12, 1991.

The Organization asserts a vacancy existed on the Operating Reporting Clerk position for more than thirty days, thereby requiring the Carrier to bulletin it in accordance with Agreement Rule 12(a) which reads as follows:

"RULE 12 EXTRA WORK AND SHORT VACANCIES

- (a) Vacancies of less than thirty calendar days' duration shall be considered short vacancies and may be filled without bulletining. However, when there is reasonable evidence that such vacancies will extend beyond the thirty day limit, they shall be immediately bulletined, showing, if practicable, probable expected duration."

The Carrier argues it never had any intention of filling the position vacated when Breemeersch took the temporary position as Chief Clerk. It says it elected to blank the position rather than train another employee to perform the duties for only a ten week duration.

While the Carrier might have the right to blank a position that is vacant for less than thirty days, Rule 12(a) requires the position to be bulletined if it is going to be vacant for a longer period. The Carrier's alternative, if it did not want to use the position, would have been to abolish it, as it originally intended. Although we find the Carrier violated the Agreement in this regard, the record fails to show that any employee was qualified and available to fill the position had it been bulletined. The one employee identified by the Organization during the handling of the dispute on the property had been disqualified from similar positions. It is appropriate, therefore, to find that she would not have been awarded the position in this case. Accordingly, the Board will not grant the remedy sought by the Organization.

Part 1 of the claim is sustained.
Part 2 of the claim is denied.

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AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of April 1995.