

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuel, Referee

PARTIES TO DISPUTE:

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

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

DISPUTE.—"Grievance of the employees that the Carrier violated rules of the Agreement in employing two nonemployees to fill two clerical positions in the Bus Department in the office of General Auditor, and for failing and refusing to properly and legally bulletin such newly created positions to the employees holding seniority rights thereto."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

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

The parties to said dispute were given due notice of hearing thereon.

The case being deadlocked, Paul Samuel was called in as Referee to sit with this Division and make an award.

The following statement of facts is jointly certified by the parties, and the Third Division so finds:

"Effective June 11, 1934, July 20, 1934, and August 6, 1934, three additional positions were placed in service in the Bus Department of the General Auditor's Office. On August 23, 1934, request was made that these positions be reclassified and paid the minimum clerical rate of \$4.05 per day, and that the positions be bulletined in accordance with the provisions of Rule 10 of the Agreement, which request was denied by the Management. As a result of negotiations thereafter adjustment was made in the rate of pay of these positions, effective as of February 1st, 1935. The carrier, however, declined to rebulletin the positions."

An Agreement bearing effective date of February 1, 1926, exists between the parties. Claim is based upon the following rules thereof:

"**RULE 10.** All new positions or vacancies will be promptly bulletined in designated places accessible to all employees affected for a period of 8 days in the seniority district in which they occur, bulletin to show location, title, hours of service, and rate of pay."

"**RULE 14.** It is understood in connection with the application of Rule 12 that the management will fill vacancies from employees within the service, or out of service in force reduction but will not go entirely outside of the service and take on new employees."

This dispute arises out of the facts jointly certified and also the following facts:

1. The Bus Department is a seniority district within itself.
2. The three positions, when created, paid only \$3.00 per day.
3. Two of the employees originally employed were entirely new and one employee at one time worked in the Freight Account Department but had not been employed for two years prior to August 23, 1934.

It is contended by the employees that these positions were not bulletined, but that even if they were bulletined as contended by the carrier, the employees so employed to fill the positions were not within the service nor out of service in "force reduction", and that, therefore, the employees in other seniority districts should have been given preference.

The carrier contends that the positions were bulletined; that no employee in the Bus Department or from any other seniority district applied for the position; and that, therefore, the carrier had the right to supply the positions with its own selection.

The record in this case is quite indefinite as to whether the positions were actually bulletined, but if they were, the rate of pay set forth in the bulletin was inadequate, improper, unjust, and it is quite possible that employees, if any, in the Bus Department might have been misled by the low rate and thus declined to bid the positions. For this reason this Division is of the opinion that the carrier did not comply with Rule 10, and that the positions should be promptly bulletined in compliance with Rule 10, including the proper rate of pay. This Division, however, cannot agree with claimant's contention that the position must be filled by employees from other seniority districts in case no employee from the Bus Department bids for the positions. Rule 14 cannot be applied in this case for the reason that said rule applied to Rule 12, which reads as follows:

"Positions or vacancies and leaves of absence of 30 days' or less duration shall be considered temporary and may be filled without bulletining."

In other words, this Division is of the opinion that positions or vacancies and leaves of absence of thirty days' or less duration shall be filled by the management "from employees within the service or out of service in force reduction, and will not go entirely outside of the service and take on new employees."

AWARD

The claim that the positions shall be promptly bulletined in designated places accessible to all employees affected in the Bus Department for the period of eight days, and that the bulletin shall show the "location territory, hours of service, and rate of pay", is allowed and ordered. If there are no applicants within the district, then the applications of employees of other seniority districts or other classes shall be given consideration providing they have sufficient fitness and ability, the management, however, to be the judge, and as is more particularly provided by Paragraph 3 of Rule 10 of the Agreement effective February 1, 1926.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 3rd day of September 1935.