

Award No. 1071  
Docket No. CL-1050

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

I. L. Sharfman, Referee

**PARTIES TO DISPUTE:**

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

**FLORIDA EAST COAST RAILWAY**

W. R. Kenan, Jr., and S. M. Loftin, Receivers

**STATEMENT OF CLAIM:** "Claim of the System Committee of the Brotherhood that:

"1. The Carrier violated rules of the Clerks' Agreement, as hereinafter stipulated, in failing to assign to Miss Sue Ford position of stenographer-clerk in the office of the Chief Engineer at St. Augustine, Florida, on her application dated August 28, 1938, and

"2. That Miss Sue Ford be compensated for wage losses sustained as a result of the Carrier's action."

**EMPLOYEES' STATEMENT OF FACTS:** "On August 26, 1938, the Chief Engineer of the Carrier issued bulletin advertising temporary vacancy, effective September 1, 1938, position of stenographer-clerk in that office. Copy of this bulletin is attached as employees' exhibit 'A.' Miss Sue Ford, a furnished employe from the Freight Accounting Department, learned of this vacancy and mailed application for same from Lake City, Florida, letter having been postmarked 1:45 P.M. August 28, 1938. On August 30, 1938, the Chief Engineer issued bulletin, copy of which is attached as employees' exhibit 'B,' assigning the temporary vacancy to Mrs. America A. Taylor, a non-employe."

**CARRIER'S STATEMENT OF FACTS:** "1. The January 1, 1938 agreement between the Railway and the Brotherhood of Railway and Steamship Clerks contains, among others, the following rules:

**Rule 9. Bulletins.**

"(a) Except as otherwise provided in this rule, and in Rule 7 (b), all new positions and vacancies (except those of less than thirty (30) calendar days duration) will be promptly bulletined on bulletin boards accessible to all employes affected, for a period of six (6) calendar days (General Offices two (2) calendar days) in the seniority roster where they occur, bulletin to show location, title, and description of position, rate of pay, assigned hours of service, assigned meal period, and if temporary the probable or expected duration. Employes desiring such positions will within six (6) calendar days (General Offices two (2) calendar days) of date of posting of the bulletin, file their applications with the official whose name is signed to the bulletin. A

in Rule 9, but simply states, in effect, that preference will be given employees filing applications for positions bulletined in other districts who have complied with the time limits of Rule 9, as compared with applications received from non-employees. The Office of the Chief Engineer is a single seniority district, which has but one seniority roster; consequently the provisions of Rule 9 (b) were inoperative in respect of the bulletining of the position in question.

"2. It is the position of the Carrier that the vacancy in question was properly bulletined by the Chief Engineer, in accordance with Rule 9 (a); that no applications for the vacancy were received by the Chief Engineer from any employees in the seniority district composing his office, or any other seniority district, within the time limits specified in Rule 9 (a); that the position was properly awarded to Mrs. Taylor, a non-employee; and that the claim of the Brotherhood, in behalf of Miss Sue Ford is not supported by the Rules of the agreement, and should therefore be denied. In this connection, it is suggested that especial attention be given Carrier's Exhibit 'O,' which is a copy of a letter written the General Chairman of the Brotherhood by the General Superintendent of the Carrier, on April 10, 1939, summarizing the salient points of the case, and expressing the reasons of the Carrier for declining the claim."

There is in evidence an agreement between the parties bearing effective date of January 1, 1938.

**OPINION OF BOARD:** The disposition of this claim is governed by Rules 9 and 25 of the Agreement. Under Rule 9 employees desiring the temporary vacancy involved were required to file their applications therefor within two calendar days of the date of the posting of the bulletin. This requirement, covering by its terms all new positions and vacancies other than those expressly excepted, was also applicable, under Rule 25, to employees filing applications for positions bulletined on other seniority districts. Since the bulletin in this case was posted on the morning of August 26th, the specified two calendar days, in conformity with the express wording of the rule, did not expire till midnight of August 28th. It appears, however, that Mrs. Taylor, a non-employee, was actually appointed to the position on the morning of August 28th, before the expiration of the two calendar days, and probably, indeed, before the expiration of forty-eight hours from the time the bulletin was first posted. Since the carrier thus violated the provisions of Rule 9, and since it actually had Miss Ford's application before it on the morning of August 29th while the bulletin of assignment to Mrs. Taylor was not posted till August 30th, the carrier cannot be heard to complain that Miss Ford's application, mailed early in the afternoon of August 28th, a Sunday, did not actually reach the official whose name was signed to the original bulletin till the morning of August 29th. Under these circumstances the provisions of Rule 25, dealing with the carrier's choice among applicants, came into play. This rule provides that "employees filing applications for positions bulletined on other districts will, if they possess sufficient fitness and ability, be given preference on a seniority basis over non-employees and/or employees not covered by these rules." Mrs. Taylor was a non-employee who had no seniority rights under the current Agreement; Miss Ford was a furloughed employee from another seniority district. Miss Ford, therefore, whose fitness and ability was not questioned, should have received the appointment, and the assignment of Mrs. Taylor to the position constituted a violation of Rule 25.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employee involved in this dispute are respectively carrier and employee 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

The evidence of record discloses a violation of Rules 9 and 25 of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 10th day of May, 1940.