

Award No. 1448

Docket No. CL-1508

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Thomas F. McAllister, Referee

**PARTIES TO DISPUTE:**

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

**CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** "Claim of System Committee of the Brotherhood that the Carrier violated the terms and provisions of Clerks' Agreement by failing and refusing to assign employees who had filed application under Rule 13 to positions of sorters in seniority district 122, also claim for all wage losses sustained as a result thereof."

**EMPLOYES' STATEMENT OF FACTS:** "Under dates of September 6th and 9th, 1939, twenty-one positions in seniority district 121 were abolished as a result of transferring car accounting work to district 122 and the installation of a machine system of car accounting. The twenty-one employees whose positions were abolished in district 121 complied with the provisions of Rule 31 by filing their name and address and in addition thereto, made application under provisions of Rule 13 for employment in other seniority districts including district 122. On September 9th and 11th, 1939, two outsiders and/or non-employees, viz. Evelyn Jorgens and Dorothy Tarba were employed on positions of sorters in District 122. They had no previous railroad experience."

**POSITION OF EMPLOYES:** "There is in effect an agreement between the parties bearing the effective date of January 1, 1936, and the following rules thereof read—

'RULE 1—EMPLOYEES AFFECTED. These rules, effective January 1st, 1936, will govern the hours of service and working conditions of the following classes of employees on the Chicago and North Western Railway:

'1. Clerks, including  
Crew callers (dispatchers) handling crew boards,  
Delivery and receiving clerks,  
Foremen and assistant foremen,  
Freight and warehouse checkers,  
Mechanical device operators,  
Sealers,  
Stenographers,  
Ticket sellers or clerks,  
Typists,  
Weighmasters, and other employees who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements, and similar work.  
Other employees, such as:  
Baggage and parcel room employees,  
Telephone and switchboard operators,  
Train and engine crew callers,  
Other employees performing analogous service.

EXHIBIT 'A'—Copy of General Chairman Leo Seifert's letter of September 15, 1939, being the first submission to the personnel department.

EXHIBIT 'B'—General Chairman's letter of October 20, 1939.

EXHIBIT 'C'—General Chairman Seifert's letter of March 16, 1940.

EXHIBIT 'D'—General Chairman D. E. Ridker's letter of July 10, 1940.

these exhibits being the only communications addressed to the railway company in respect to the matter.

"On or about June 1, 1939, car record work was transferred from seniority district 121, car accountant's office, to seniority district 122, central computing and typing bureau, and handled by machine operation in lieu of longhand operation, under provisions of which agreement employees in seniority district 121 were transferred with seniority to district 122.

"Subsequent to the reorganization of work in connection with machine operation, various employees made application for employment in seniority district 122, predicated their right to do so on basis of provisions of rule 13, clerks' agreement, reading:

'Employees may file applications for positions covered by other seniority rosters or in other seniority districts, and will be given preferred consideration in filling new positions or vacancies which are not awarded under Rule 17 to employees whose seniority datum is prior to date vacancy occurred.'

"As a result of Evelyn Jorgens and Dorothy Tarba being given employment as sorters in district 122, complaint as indicated in attached correspondence in railway company Exhibits 'A' to 'D,' inclusive, resulted."

**POSITION OF CARRIER:** "Seniority district 122 is primarily a machine and computing department, as indicated by the designation of the district as appearing in rule 24, clerks' agreement.

"It is and has been the practice when employing persons for class 2 positions, such as sorters, filers, etc., to employ only those who were qualified to operate typewriters or other types of machines and, therefore, had necessary fitness and ability for advancement to higher rated or clerical positions. To employ persons not having such qualifications would eliminate the opportunity for training employees in the lower class for advancement to the higher class.

"It is the position of the railway company that it is its prerogative to determine the necessary qualifications of a person who it shall employ, and there are no requirements under rule 13, clerks' agreement, that the railway company give employment to a person from another seniority district who does not have the necessary fitness and ability to perform the work as may be required."

**OPINION OF BOARD:** On September 9 and 11, 1939, there occurred temporary vacancies in positions of sorters in Seniority District No. 122. No employees in the service of the Carrier in that district being available, or who desired positions, furloughed employees in Seniority District No. 121 filed applications for this work. The Carrier, however, employed two persons not theretofore in the employ of the carrier and assigned the latter to these temporary vacancies. In answer to the petition of the said furloughed employees who filed applications for such work, the carrier contends that the said applicants were not qualified typists or calculating machine operators, and, not being so qualified, would be unavailable for advancement to higher positions. Rule 13 provides:

"Employees may file application for positions covered by other seniority rosters or in other seniority districts, and will be given preferred consideration in filling new positions or vacancies which are not awarded under rule 17 to employees whose seniority datum is prior to date vacancy occurred."

The bulletins setting forth the requirements for the positions in question are as follows:

"Duties (Briefly): Sorting and Filing of Interline Waybills for Abstracting, Inserting and Pulling Carbons, and Various Sorting Duties as Assigned."

There is no proof that the applicants did not possess the necessary qualifications for the bulletined positions in this case. It is not required by the agreement that such employees must be trained and equipped to perform duties in higher positions than those bulletined. The evidence shows that the claimant employees had the necessary qualifications for the positions in question.

It is also contended that the claims in question had never been submitted to the carrier prior to submission to the Board. The evidence, however, discloses that the matter was handled in accordance with the request of the carrier. Mr. Pangle had advised the representative of the employees that, if there were any outstanding violations, he would appreciate it if the representative would call his office, relate the nature of the complaint, and that he would see that it would be handled without all of the necessary procedure. It further appears that conferences were had with the representatives of the carrier, and that the employees' representative stated that he was making claim for back pay unless the applicants were assigned immediately. Thereafter it was sought to submit a joint statement to this Division, in which claim for back pay was made. The carrier refused to join in the statement. Under the circumstances of this case, it is our conclusion that the complaint was handled in the manner requested by carrier and that claim for pay was properly made, and the carrier advised thereof.

Under the circumstances of this case, we are of the opinion that the carrier violated Rule 13 of the current agreement and claimants should be reimbursed for any wage losses sustained.

**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 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

That the Carrier violated the current agreement as contended by the petitioner, particularly Rule No. 13, and claim for wage losses will be sustained.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 28th day of May, 1941.