

Award No. 1754
Docket No. CL-1746

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Carl B. Stiger, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
RAILROAD COMPANY, SAN ANTONIO, UVALDE & GULF
RAILROAD COMPANY, SUGARLAND RAILWAY COMPANY,
ASHERTON & GULF RAILWAY COMPANY**

(Guy A. Thompson, Trustee)

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

(a) The carrier violated the Clerks' Agreement in November, 1940, by failing and refusing to fill the positions of Night Steno-Clerk, Diversion Clerk, Refrigeration Clerk pending assignment. Also

(b) Claim that all employees involved in or affected by the carrier's action be compensated for all loss sustained.

JOINT STATEMENT OF FACTS: During November 1940 the following positions became vacant and were bulletined, but were not filled pending assignment.

| Title of Position | Dates Positions Were Not Filled |
|---------------------|---------------------------------|
| Night Steno-Clerk | Nov. 1st to Nov. 6th incl. |
| Diversion Clerk | Nov. 7th to Nov. 10th incl. |
| Refrigeration Clerk | Nov. 25th to Nov. 30th incl. |

POSITION OF EMPLOYEES: The employees quote the following from agreement that became effective November 1, 1940:

Rule 10. Temporary Assignment

"Bulletined positions will be filled temporarily pending an assignment, and, in the event no applications are received from employees covered by this agreement, the assignment may be made by appointment."

Rule 25. Extra Board

"(a) When it is mutually agreed, an extra board will be maintained and rules governing the manner of working extra board employees will be established in writing.

"(b) Until an agreement is reached establishing an extra board, all temporary positions and vacancies will be filled by rearrangement of the regular forces in that office, giving senior employees their preference. The senior employee, unassigned on that roster, will be called to fill the vacancy left after rearrangement of the regular force.

The Night Assistant Transportation Clerk's position was bulletined November 2, 1940, and was assigned November 7, 1940, assigning Mr. E. D. Myers, Night Steno-Clerk to this position. Mr. Myers, however, was carried on the position effective November 1 and his position was not filled until November 7. This position was bulletined November 8, 1940, and position assigned to Mr. P. K. Mims, Diversion Clerk, November 15, 1940. Mr. P. K. Mims, however, was placed on the position on November 7, riding the bulletin until assignment was made.

November 15, 1940, Diversion Clerk's position was bulletined, Mr. N. P. Wiley being placed on position November 11, riding bulletin. Position assigned to him November 23. Mr. Wiley subsequently assigned position as Statistical Clerk, November 25, 1940, and Mr. F. E. Browan, Refrigeration Clerk was assigned to position of Diversion Clerk, November 25, 1940, blanking position of Refrigeration Clerk November 25 to November 30, inclusive.

Attention of your Honorable Board is directed to the fact that there is no specific or definite claim made in this case. No time has been claimed by any employes in the service of the Carrier account not being permitted to ride the bulletins while the positions were under bulletin, with one exception, which employe later withdrew his claim.

It is the contention of the Carrier that inasmuch as there were several positions involved and the Carrier did not have any one qualified to place on the positions during the life of the bulletins, the fact that no specific or definite claim has been made by the Organization for the employes affected and the further fact that no employe, with one exception, made any claim, which employe later withdrew his claim, that the claim is without merit and your Honorable Board is respectfully petitioned to render an award upholding the contention of the Carrier.

OPINION OF BOARD: Rule 10 of the agreement effective November 1, 1940 reads:—

"Bulletined positions will be filled temporarily pending an assignment, and, in the event no applications are received from employes covered by this agreement, the assignment may be made by appointment."

It is conceded the vacant positions were bulletined and not filled pending assignment. The Carrier, relying on Rule 7, contends it did not violate Rule 10 because there were no employes qualified to fill the positions during the life of the bulletins. Rule 7 reads in part:—

"Promotions, assignments, and displacements under these rules shall be based on seniority, fitness, and ability; fitness and ability being sufficient, seniority shall prevail, etc."

Petitioner asserts this rule is not applicable to the provisions of Rule 10. We will assume for the purpose of this case only that the rule is applicable, or, if not applicable, that there should be read into Rule 10 the provision that positions will be filled temporarily pending an assignment if there are employes of sufficient fitness and ability available.

At the expiration of the bulletins assignments to the three positions involved were made. All of the employes so assigned were available for the positions during the bulletin periods. It is quite apparent that, in the judgment of the Carrier, these employes had sufficient fitness and ability to perform the duties of the positions after the bulletin period expired and, so far as shown by this record, were as well qualified to fill the positions pending the assignments as at the time of the assignments. The Carrier has failed to establish this defense to the claim.

Respondent's proposition that the claim must be denied because no employes filed claims in this dispute is without merit. Awards 137, 524, 561, 1711.

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 employes involved in this dispute are respectively carrier and employes 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of March, 1942.