

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When on May 16th, 1942, per Superintendent's Bulletin No. 16, it assigned Clerk Joe Ragland to position of Clerk, Sterlington, La., rate \$6.29 per day, six days per week, and failed and refused to release Clerk Ragland from the position he occupied as Yard Clerk at Monroe, La., rate \$5.84 per day, seven days per week, in order that he could assume the duties of the job to which he was assigned and refused to compensate Clerk Ragland upon the basis of \$6.29 per day, the rate of the position to which assigned, thus depriving this Clerk of the increased earnings which he sought and to which his seniority on the Clerks' seniority roster, Little Rock—Louisiana Division, entitled him.

2. That Clerk Joe Ragland shall be compensated for wage loss sustained in amount of forty-five (45) cents per day, representing the difference in the rates of \$5.84 per day and \$6.29 per day, May 16th to August 6th, 1942, both dates inclusive, except Sundays and holidays, because of the Carrier's failure to comply with the provisions of the agreement.

EMPLOYEES' STATEMENT OF FACTS: On May 8th, 1942 the Division Superintendent, per his Bulletin No. 15, copy designated as EXHIBIT "A", advertised for bids the position of Clerk—Sterlington, La., rate \$6.29 per day, six days per week, assigned hours 6:30 A. M. to 10:30 A. M., 11:30 A. M. to 3:30 P. M., bids to be received until and including 5:00 P. M. May 14th.

On May 13th, 1942, Clerk Joe Ragland, listed as No. 107 on the 1942 Clerks' seniority roster with a seniority date of November 11th, 1940, filed application for the Clerk position at Sterlington advertised per Superintendent's bulletin No. 15. Copy of the application filed by Clerk Ragland is designated as EXHIBIT "B".

On May 16th, 1942, per Superintendent's Bulletin No. 16, copy designated as EXHIBIT "C", Clerk Ragland was assigned to the Clerk position at Sterlington advertised per Superintendent's Bulletin No. 15.

This rule immediately heretofore quoted has not as yet been placed into effect, due to the fact that all changes in rules of the agreement presented by the Employees in February 1940 have not yet been composed. They are now in the hands of the United States Board of Mediation. This particular rule, quoted above, has, however, been composed and so certified by both the authorized representatives of the Employees as well as the Management of the Railroad to the National Mediation Board.

These facts are made known to your Honorable Board to sustain the Management's contentions in this particular case that the Employees are seeking in the presentation of this case to your Honorable Board to obtain a condition of employment sought but not granted in conference. The Employees requested in February 1940 that the Management change the rule that would require payment to employees of WAGE LOSS SUFFERED who are assigned to positions and not transferred within the time limits provided for in the rule. This is a condition of employment sought for but was denied by the Management but subsequently composed and a rule mutually agreed upon that employees would be transferred promptly following the issuance of assignment bulletin, but the rule agreed upon did not give to the employees a condition of employment that would compensate them for wage loss suffered such as they seek in this case.

The Management feels that the Employees' contentions, as set forth in their statement of claim, should be denied by your Honorable Board, as they are not supported by any rule or practice under the agreement with the Clerks' Organization in effect on this property since August 1, 1926.

OPINION OF BOARD: Although the employees invoke Rule 9 as having some bearing upon this controversy we think the decision must rest entirely upon the interpretation of Rule 10 which provides:

"Bulletin, Rule 10

"(a) New positions or vacancies will be promptly bulletined in all offices, freight houses, stations and storehouses on the district where the vacancy occurs in a place accessible to all employees affected for a period of five (5) days, and Local Chairmen will be furnished with copy. Bulletin must show location, title, hours of service, six (6) or seven (7) day position, and rate of pay.

"(b) Employees desiring any such positions will file their applications with the designated official within five (5) days and an assignment will be made within five (5) days thereafter. The name of the successful applicant will immediately thereafter be posted for a period of five (5) days where the position was bulletined.

"(c) This rule shall apply to all positions except hourly rated laborers."

That the carrier complied with the letter of the rule there can be no doubt. But the employees contend that the substance of the rule was evaded in that more than two months elapsed between the time Ragland was assigned to the position at Sterlington and the time he was transferred to it. The contention is based on the theory that, in contemplation of Rule 10, upon assignment to a position the employee is immediately entitled to the emoluments pertaining to it.

Language may be found in Award No. 899 which appears to support the employees' position. But we think neither that award nor Award No. 328 are applicable to the instant dispute. In both those cases the employee had actually been transferred to the new position. Here the essence of the dispute is the alleged wrongful denial of transfer from May 16th to August 7th.

The carrier argues that to sustain the employees' position would amount to a modification of the agreement by decision of this Board rather than by negotiation as provided for in the Railway Labor Act. In the light of the

facts of record and admissions, inherent in the presentation of the case, we think that would be the effect of a decision upholding the employees' position. It appears that the issue presented here has been made the subject of specific definition, in agreements negotiated by the Brotherhood with some other carriers, by placing a specific limitation upon the time within which transfer to the new position may be made. Indeed, in pending negotiations between the Brotherhood and this carrier a rule making Rule 10 more specific, with respect to time of **transfer after assignment**, has been agreed upon. While, of course, negotiations for a more specific rule should not be given any great weight in the interpretation of an existing rule, they throw some light upon what the parties conceive the existing rule to mean.

We think **assignment** to a position, in contemplation of Rule 10, does not carry with it the right to **immediate transfer** to it. However, this does not leave the time of **transfer** to the caprice of the carrier. The transfer must be made within a reasonable time. What is a reasonable time must be determined from the facts and circumstances of the particular case.

Under ordinary conditions Ragland's transfer to the position at Sterlington could not be said to have been made within a reasonable time after his assignment to it. But we think the carrier has shown that it was confronted with exigencies, arising from extraordinary traffic conditions and a shortage in available man power, beyond its control. There is nothing in the record to indicate that it was arbitrarily or capriciously withholding Ragland's transfer. On the contrary we think the record amply warrants the conclusion that the carrier was acting in good faith and consummated Ragland's transfer to the position at Sterlington as soon as was reasonably possible under the circumstances and conditions with which it was confronted.

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 employe involved in this dispute are respectively carrier and employe 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 under the facts as disclosed by this record the carrier did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of April, 1943.