

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

KENTUCKY & INDIANA TERMINAL RAILROAD COMPANY

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

1. The senior qualified applicant for the position as Stenographer-Clerk in the office of Secretary and Auditor, Miss Dorothy Sheets, be assigned to this position.
2. Miss Dorothy Sheets be paid the difference between her actual earnings and \$8.18 per day since August '13, 1946.

EMPLOYES' STATEMENT OF FACTS: On August 8th, 1946, Mr. F. J. Flispart, Secretary and Auditor, K. & I. Terminal Railroad, issued bulletin No. 15 over his signature advertising a Stenographer-Clerk position vacancy 8:00 a.m. to 5:00 p.m., day of rest Sunday, showing duties "to perform stenographer work, typing bills and vouchers, records of new employees and general clerical duties."

Applications for this position were submitted on August 10th by two qualified employees: Miss Dorothy L. Sheets, a furloughed stenographer and clerk in the Stores Department, seniority date January 23rd, 1944; and Miss Betty Jane Seacat, holding a temporary vacation clerk assignment in the General Freight Agent's Office, seniority date July 29th, 1945.

On August 12th, 1946, Mr. Flispart issued his bulletin No. 16 assigning the position as Stenographer-Clerk in his department to Miss Betty Jane Seacat, the junior applicant.

On receipt of copy of bulletin No. 16 General Chairman Wright telephoned and asked Mr. Flispart's reason for disregarding the senior applicant, Miss Sheets. Chairman Wright inquired particularly if Mr. Flispart had taken exceptions to Miss Sheets' qualifications and he replied that there was no question as to capabilities, that he had preferred Miss Seacat therefore he had chosen her to fill the position.

Chairman Wright immediately called K. & I. Personnel Director Mr. Thomas L. Dixon and presented the above facts to him. Mr. Dixon suggested that Chairman Wright write him as he did not care to render a decision on the question involved without further time to look into the matter. This was done (See exhibit 5 attached).

Under date of September 4th, 1946, Personnel Director Mr. Dixon declined the claim and declared that in his opinion it was the Carrier's prerogative to choose either employee. (See Exhibit 6 attached.)

"Through oversight the form set out on page 31 was not used. I send you herewith copy of form showing Walter Roegge as the successful applicant."

Though General Chairman Green replied under date of October 21, 1945, in part as follows:

"You have always awarded positions in your office to the senior employees, and since Walter Roegge was the only applicant for this position, I see no need for continuing this controversy as the Company has not violated the Clerks' Agreement, and I have no Statement of Claim to make."

it would seem apparent that the Organization accepted the principle that Company seniority was non-existent effective with the April 13, 1942 Agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: The position of Stenographer-Clerk in the office of Secretary and Auditor in Seniority District 2 was bulletined and no bid was received from any employee in the same seniority district. Two applications were received from employees on other districts, namely: the Claimant of District 3 with seniority of January 24, 1944, and a Miss Seacat of District 1 with seniority of July 3, 1945. Miss Seacat was awarded the position.

Claimant bases her claim on the fact she was senior to Miss Seacat and therefore entitled to preference, and relies on a rule which originally supplemented the agreement of 1921.

On November 29, 1938 the parties supplemented their agreement of 1921 by adopting a new Rule 18, the last paragraph of which provided:

"When vacancies occur, and no bids are received from districts affected, employees in other seniority districts, having sufficient fitness and ability, will be given preference over non-employees."

Then on October 21, 1941 another agreement supplementing the 1921 agreement was made which provided:

"When clerks transfer from one seniority district to another seniority district under the last paragraph of Rule 18, they will retain their seniority standing in their home district."

"If more than one clerk applies for position under this rule, the senior clerk will be given preference. * * *"

Claimant relies on the last quoted provision granting preference to the senior of those from other seniority districts who apply. However, we find this provision was not carried forward in the subsequent general agreements between the parties which superseded the agreement of 1921 as so modified.

In the general agreement of April 13, 1942 this provision which Claimant relies on was omitted. The rule (18d) merely provided:

"When vacancies occur, and no bids are received from districts affected, employees in other seniority districts, having sufficient fitness and ability, will be given preference over non-employees."

Next, in the general agreement of January 1, 1945 such provision was also omitted, the rule (9(c)) stating:

"* * * In the event no applications are received positions will be filled by appointment. Written applications from qualified employees on the same seniority district shall be given preference over applications from employees on other districts, and written applications from qualified employees covered by this agreement shall

be given preference over employees not embraced within the scope of this agreement or non-employees."

Thus, the present rule is clear that where no applications are received from employees on the same seniority district, Carrier is obliged only to give preference to employees covered by the agreement. The agreement nowhere requires Carrier to give preference to the senior applicant on another seniority district, as Claimant is here contending.

Since the rule is clear and unambiguous, there is no room for interpretation or construction. The supplemental rule adopted on October 21, 1941 was not an interpretation or clarification of any existing rule but was a new and additional rule supplementing the agreement and imposing an additional obligation upon Carrier. When such supplemental rule was omitted from the subsequent general agreements of 1942 and 1945, it was superseded and abandoned. It may no longer be regarded as in effect.

It is an established rule of contract law that where a later contract is entered into between the same parties in relation to and covering the same general subject matter as the earlier one, then the later contract supersedes the earlier one. The later contract is presumed to express the final agreement of the parties, and terms and conditions in the earlier agreement not included in the later one nor expressly reserved or continued by it are deemed superseded and abandoned. And this is so even though the later contract does not in express terms state that it supersedes the earlier one.

Accordingly, even though Claimant was the senior of the two applicants from other seniority districts, there is no rule under the current agreement which entitles her to preference for that reason, and her claim must be denied.

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 Carrier did not violate the agreement.

AWARD

Claims (1 and 2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of March, 1948.