

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, SAINT PAUL, MINNEAPOLIS AND OMAHA
RAILWAY COMPANY**

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

(a) That Carrier violated Agreement Rules when on January 5, 1948 it denied Donald C. Oehlke, Clerk, Assistant Auditor Revenues—Passenger (Passenger Accounting Department) seniority district, the right to transfer and/or promote and work in Minneapolis Station seniority district, and

(b) That Carrier now permit his employment in Minneapolis Station seniority district as Clerk, with Class 1 clerical seniority date of January 5, 1948, with retention of and continuing accumulation of seniority in the district and on the rosters from which transferred and/or promoted, and

(c) That Carrier now reimburse Clerk Oehlke as Clerk, Minneapolis Station for time held out of service from January 5, to January 21, 1948, both dates inclusive, and

(d) That Carrier also reimburse Clerk Oehlke for the difference between his earnings as Class 2 employe in Passenger Revenues Department and what he would have earned in clerical Class 1 service at Minneapolis Station from January 22, 1948, until permitted to work as clerk at Minneapolis Station.

EMPLOYEES' STATEMENT OF FACTS: On December 31, 1947, Clerk Oehlke, seniority date of November 1, 1943, on Passenger Revenue Clerical Class 1 seniority roster in General Office, St. Paul, was furloughed account reduction in force.

Having previously promoted from Class 2 roster in same seniority district, he exercised his displacement rights therein, by virtue of retention and continued accumulation of Class 2 seniority date of entry into Carrier service, making actual displacement January 2, 1948 at a lower rate of pay; a Class 2 employe junior in service to him being furloughed by such displacement.

Wishing to restore his reduced earnings to equal prior earnings he sought clerical employment in station service.

There being a clerical vacancy at Minneapolis Station, on January 3, 1948 he applied for assignment to same and was instructed to report for duty at 12:00 Noon, Monday, January 5, 1948.

Carrier's Exhibit No. 5—Mr. R. J. Steiner's letter of March 5, 1948, showing practices in the Passenger Traffic Department.

Carrier's Exhibit No. 6—Mr. E. Price's letter of March 8, 1948, showing practices in the Treasurer's Office.

Carrier's Exhibit No. 7—General Superintendent H. P. Congdon's letter of March 12, 1948, showing practices in the Operating Department.

Carrier's Exhibit No. 8—Letter of March 30, 1948, signed by Division Engineers H. H. Hall and C. E. Hise showing practices in the Engineering Department.

In reply to item (c)—

"(c) That Carrier now reimburse Clerk Oehlke as Clerk, Minneapolis Station for time held out of service from January 5 to January 21, 1948, both dates inclusive."

The evidence shows conclusively that the understanding had with Oehlke, January 5, 1948, by Asst. Agent Gjervik was that subsequent to Oehlke reporting to General Auditor E. E. Rusch, January 5, 1948, he would return to Minneapolis Freight Station for such employment as might be available. The evidence shows further that Oehlke failed to report for work at Minneapolis Freight Station, but did report for work in the Accounting Department at St. Paul, January 22, 1948. Therefore, any wage loss which may have been incurred by Oehlke during period January 5 to January 21, 1948 was not the responsibility of the carrier but was the result of Oehlke's failure to make himself available for employment either at Minneapolis Freight Station or in the Accounting Department at St. Paul.

Further, claim for compensation on basis of employment as clerk at Minneapolis Freight Station cannot be supported for the reason the facts in evidence indicate conclusively there were no vacancies at that point. (See Carrier's Exhibit No. 1.)

In reply to item (d)—

"(d) That Carrier also reimburse Clerk Oehlke for the difference between his earnings as Class 2 employe in Passenger Revenues Department and what he would have earned in clerical Class 1 service at Minneapolis Station from January 22, 1948, until permitted to work as clerk at Minneapolis Station."

As previously stated, the carrier has not denied Oehlke employment at Minneapolis Freight Station on a class of position for which he is qualified on any dates he may have reported for service at that station and there was a vacancy on a position for which he was qualified—that is, such position not being filled by an employe holding seniority at Minneapolis Freight Station. At no time from and subsequent to January 22, 1948 does the evidence show that Oehlke reported for work at Minneapolis Freight Station or otherwise made himself available for employment at that point. Such being the case, this Board cannot consistently nor properly sustain a claim that he be reimbursed differential between his earnings on a Class 2 position in the Passenger Revenues Department and some mythical position on which he might have been employed at Minneapolis Freight Station had he reported for employment at that point and been available.

(Exhibits not reproduced.)

OPINION OF BOARD: The Record is in a state of high confusion as to the facts of this case. While Claimant has referred to several Rules in support of the claims, it is clear that the basic reliance has been upon Rule 18 of the Agreement of July 16, 1926; Rule 18 is as follows:

"Rule 18. Employes filing applications for positions bulletined on other districts or on other rosters will be given preference over non-employes."

This rule allows the employe of his own volition to make application for positions **bulletined** on other districts or on other rosters. It should be carefully noted that this rule speaks of **bulletined** positions, and it must be held to be limited to such. Claimant recognized this limitation when he, through his representatives, made the following statement:

"He had acquired preference over non-employees to assignment to **vacancies bulletined** in other districts and on other rosters under provisions of Rules 18 and 6. * * *." (Emphasis added.)

Claimant voluntarily and of his own action sought to leave the Accounting Department seniority district and to enter the Operating Division—Minneapolis Station seniority district. Claimant contends that preference was given to a non-employe, in violation of Rule 18. The Record shows definitely, however, that every position **bulletined** in the Minneapolis district from January 5, 1948, until well after Claimant Oehlke return to his duties at the Accounting Department district on January 22, 1948, was awarded to an employe having seniority in the Minneapolis district. The Record discloses that it was not until February 17, 1948, that a **bulletined position** was awarded to an employe who did not have seniority in the Minneapolis district as of January 5, 1948. The Record is devoid of any showing that a **bulletined position** was awarded to and filled by a non-employe at any time from January 5, 1948, to February 17, 1948. The Board does not find it necessary to determine in what respects an employe's seniority rights would be affected by an accomplished transfer under Rule 18. In respect to Claim (c) the Record indicates that Claimant's absence from service during the period involved in that claim was of his own election. He possessed the same right to return to his position in the Accounting Department on January 5 and thereafter that he exercised on January 22, 1948.

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 did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 14th day of March, 1949.