

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that Carrier violated rules of agreement, effective April 1, 1945—

1. When, on Thursday, June 30, 1948, it did not assign extra or furloughed Yard Clerk, M. E. Kramer, seniority as Yard Clerk dating June 15, 1943, to vacancy of first shift Yard Clerk, C. B. & Q. connection, hours 7 A.M. to 3 P.M.

2. That Yard Clerk M. E. Kramer be allowed compensation at rate of the position to which he was denied employment in accord with the rules of the agreement, one day's pay, amount \$10.19.

EMPLOYEES' STATEMENT OF FACTS: There existed a vacancy on the first shift, 7 A.M. to 3 P.M. of Yard Clerk at the C. B. & Q. connection, No. 2 Yard, on June 30, 1948. M. E. Kramer, claimant, was the senior available employee and in accordance with that part of Rule 17 reading:

"When forces are increased or vacancies occur, furloughed employees shall be returned to service in the order of their seniority rights. (Emphasis supplied.) * * *"

"Furloughed employees when available shall be given preference on a seniority basis to all extra work, short vacancies and/or vacancies occasioned by filling of positions pending assignment by bulletin, which are not filled by rearrangement of regular forces. * * *"

should have been called to fill the vacancy. Contrary to Management's obligation under the rule, they unilaterally filled the vacancy with a junior employee, name, J. M. Hassinger, whose seniority date is not known inasmuch as his name does not appear on the January, 1948 Employee Seniority Roster.

This claim was initially presented to the Management by the claimant, Mr. Kramer, on July 10, 1948. (Employees' Exhibit 1.)

Upon denial of the claim by the Carrier's Local Agent, it was subsequently appealed to Superintendent Miller, thence to the Director of Personnel, Mr. Wicks. Employees' Exhibit 2 is copy of my letter of Appeal to Mr. Wicks. Claim denied by Mr. Wicks on September 3, 1948. (Employees' Exhibit 3)

Further handling of claim is evidenced by my letter to Mr. Wicks dated September 10th and his reply of September 11th. (Employees' Exhibits 4 and 5)

contended that the claimant was runaround. There is no runaround rule in the agreement and the only basis on which their claim can be supported is by proving that the claimant suffered monetary loss which they cannot do. On the date of claim, the claimant was entitled to one day's work which he received and on the following day resumed his seniority standing so there was no loss possible.

The Employees have cited Award No. 3913 as supporting their position. The only similarity between the two claims is that two extra men were available for work in both instances and the junior man was used ahead of the senior. There the similarity ends. The main difference between the two claims is the question of qualification. If both extra men had been qualified to fill the vacancies that existed on date of claim, June 20, 1948, and we failed to use the senior man on the first one, the claim would have been similar to that involved in Award No. 3913 and we would have paid it without any hesitancy. On June 30, 1948, we had two extra men available for two extra days' work, each of which was entitled to one day's work under our rules. The junior of the two was qualified to fill only one of the two vacancies while the senior man had the necessary qualifications to fill either of them. For that reason and that reason only, the senior man was used out of turn.

There is no basis for the claim under the rules of the agreement and as the claimant suffered no loss, the claim should be denied.

Exhibits not reproduced.

OPINION OF BOARD: The main issue in this dispute is whether or not Mr. Kramer, the senior qualified extra clerk, should have been called for a vacancy on the 7:00 A. M. shift, June 30, 1948, in preference to a junior extra clerk. From the facts of record the Board concludes that he should have been; therefore, the claim should be sustained.

Other issues have been injected by the parties, but the Board by this award is not passing on any other issues.

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 claim will be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of March, 1949.