

Award No. 4544
Docket No. CL-4480

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

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 Employes that the Carrier violated the Clerks' Agreement:

(1) When it failed to bulletin position of Miscellaneous Accounting Clerk vacated by Mr. L. H. Becker, when he was assigned to position as advertised in bulletin No. 465 on May 29, 1948, as required by Rule 10, paragraph A and Rule 11 of our current Agreement, effective April 1, 1945.

(2) That Mr. Jack Bernard, claimant and oldest employe receiving the Minimum Clerk's salary of \$8.84 per day, be paid the difference between \$8.84 per day and \$10.12 per day, the rate of Mr. Becker's vacated position from June 1, 1948 until June 15, 1948.

EMPLOYES' STATEMENT OF FACTS: Under date of May 27, 1948 the Carrier in Seniority District No. 19, office of the Agent and Freight Auditor, bulletined position as "Station Accountant" under Bulletin No. 465, attached as Employes' Exhibit "A" on May 29, 1948; this position was assigned to Mr. L. H. Becker, and this assignment bulletin is attached as Employes' Exhibit "B."

On June 1, 1948, the Employes' Committee directed a communication to Mr. W. L. Eifert, Agent and Freight Auditor, requesting reason why when Mr. Becker was assigned to the position as bulletined in Bulletin No. 465, his position was not bulletined and copy of this letter is attached as Employes' Exhibit "C."

Mr. Eifert's reply to this inquiry dated June 4, 1948, in which he endeavors to justify his action, but which, we contend, is without merit under the rules of the agreement, is attached as Employes' Exhibit "D."

On June 10, 1948, Mr. Jack Bernard, being the oldest man in the point of seniority holding a minimum clerk's position at \$8.84 per day and the most likely to suffer, as a result of the Carrier's failure to bulletin a vacant position, filed claim for the difference in rate between the position he was holding and the rate of the position vacated by Mr. Becker, which, the Carrier had failed to bulletin, and copy of his claim is attached as Employes' Exhibit "E."

Upon receipt of claim from Mr. Bernard, the Agent and Freight Auditor sent letter attached as Employes' Exhibit "F" to Mr. Bernard, in which he advises that he had instructed the Chief Clerk to bulletin Mr. Becker's posi-

in point. Rule 11 provides: "All new positions and vacancies (except those of less than thirty (30) days' duration) will be promptly bulletined * * *." The vacancy was bulletined and filled before it existed thirty days.

The Employes, in their Statement of Claim, allege violation of Rule 10, paragraph (a) and Rule 11. Paragraph (a) of Rule 10 states: "When employes bid for and are awarded permanent positions, their former positions will be declared vacant and bulletined." (Underscoring ours.) The vacancy was not a permanent one; it was caused by an employe being off duty ill. Further, Mr. Becker did not bid for the position; he was assigned to it under Rule 12, so it is readily apparent that paragraph (a) of Rule 10 has no application.

Rule 11, as indicated by its caption "Bulletins," merely provides a uniform method of handling bulletins covering permanent vacancies and temporary vacancies of more than thirty days' duration.

The Employes have not proved there was a violation of any applicable rules of the agreement and the claim should be denied for lack of merit.

(Exhibits not reproduced.)

OPINION OF BOARD: The Terminal Board of Adjustment of the Brotherhood claims Carrier violated their agreement during the period it failed to bulletin the position of Miscellaneous Accounting Clerk. It asks that Claimant, as the oldest employe receiving a minimum clerk's salary, be paid the difference in the rate of his position and that of Miscellaneous Accounting Clerk during the period the latter remained vacant; to wit, June 1, 1948, until June 15, 1948.

On May 27, 1948, Carrier bulletined the position of Station Accountant at 12th and Poplar Streets, effective June 1, 1948. It was bulletined as temporary because created by sick leave granted L. W. Dodge. No bids being received the Carrier, on May 29th, 1948, assigned L. H. Becker to that position. Becker was at that time assigned to and occupied the position of Miscellaneous Accounting Clerk. Carrier did not abolish the position of Miscellaneous Accounting Clerk, but, thinking it could get along without the position, blanked it. On June 12, 1948, Carrier bulletined the position of Miscellaneous Accounting Clerk as temporary and, on June 15, 1948, awarded it to S. T. Jenkins, an employe with greater seniority than that of Claimant.

In the meantime, on June 1, 1948, the local Committee inquired of the Carrier why the position of Miscellaneous Accounting Clerk, the position here involved, had not been bulletined effective June 1, 1948. Also, on June 10, 1948, Claimant made claim, based on the foregoing, for the difference in pay for which the Terminal Board herein contends.

Cited awards of this Division denying claims based on Carrier's failure to fill temporary vacancies on six-day positions caused when lay-offs were taken by the occupants thereof, which denials are based on the principle that the six-day guarantee runs to the employe and not the position, are not in point and here neither applicable nor controlling for such is not the factual situation before us. Here Carrier assigned Becker to the temporary position of Station Accountant and left vacant, without abolishing it, his position of Miscellaneous Accounting Clerk, a six-day position.

Rule 10 (a) provides:

"When employes bid for and are awarded permanent positions, their former positions will be declared vacant and bulletined. Employes will not be permitted to bid in their former positions within thirty (30) days, except when affected by reductions in force."

Rule 10 (b) provides:

"New positions or vacancies of less than thirty (30) calendar days duration shall be considered short vacancies and may be filled without bulletining. However, when there is reasonable evidence

that such vacancies will extend beyond the thirty (30) day limit, they shall be immediately bulletined, showing, if practicable, probable or expected duration."

Rule 11 provides, in part, as follows:

"All * * * vacancies (except those of less than thirty (30) days duration) will be promptly bulletined in agreed upon places accessible to all employes affected, for a period of five (5) days (unless a short period of time has been agreed upon) in the seniority district and on the roster where they occur."

When Carrier assigned Becker to the position of Station Accountant there occurred a vacancy in the position of Miscellaneous Accounting Clerk. The vacancy had occurred in the position of Station Accountant when A. C. Schallert, the occupant thereof, bid on and, on May 27, 1948, was assigned to the position of Reconsigning and Miscellaneous Accounting Clerk, the latter position being vacant because of sick leave having been granted to L. W. Dodge, the occupant thereof. These vacancies, caused by the sick leave granted Dodge, all having been bulletined down to the position of Miscellaneous Accounting Clerk, we find, when Carrier assigned the regular occupant thereof to the position of Station Accountant, there was such reasonable evidence that such vacancy would extend beyond thirty days that Carrier, under Rule 10 (b), was required to immediately bulletin the position in accordance with Rule 11 and that its failure to do so was in violation of the foregoing rules of the parties' effective Agreement.

In answer to the fact that there may have been others who, as a matter of seniority, had prior right over Claimant to the work we have often said that the penalty for violation of the Agreement is the important thing; that the claim on behalf of an individual is merely an incident which is of no concern to the Carrier. See Awards 1646, 2282, 3890, and 4390 of this Division.

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 rules of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of September, 1949.