

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

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

GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN
R. R. CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.;
THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN
ANTONIO, UVALDE & GULF R. R. CO.; THE ORANGE &
NORTHWESTERN R. R. CO.; IBERIA, ST. MARY & EASTERN
R. R. CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.;
NEW ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA &
NORTHERN R. R. CO.; SAN ANTONIO SOUTHERN RY. CO.;
HOUSTON & BRAZOS VALLEY RY. CO.; HOUSTON NORTH
SHORE RY. CO.; ASHERTON & GULF RY. CO.; RIO GRANDE
CITY RY. CO.; ASPHALT BELT RY. CO.; SUGARLAND RY. CO.
(Guy A. Thompson, Trustee)

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

(a) The Carrier violated the Clerks' Agreement at San Antonio, Texas,
in January 1948, when it failed to bulletin position of P.B.X. (telephone)
Operator vacated by Mrs. Annie K. Jones, as well as subsequent vacancies
resulting therefrom. Also

(b) Claim that Mrs. Bessie Harris be paid for all losses sustained be-
cause of the positions not having been bulletined.

EMPLOYEES' STATEMENT OF FACTS: On December 31, 1947, and
prior thereto, the following were employed as operators in the San Antonio,
Texas telephone office, with seniority date and hours as shown below:

NAME	SENIORITY DATE	ASSIGNED HOURS
Jones, Annie K.	8-24-28	8:30 A.M.— 5:00 P.M.
Boyd, Elizabeth K.	12-18-33	7:00 A.M.— 3:00 P.M.
Weaver, Caroline K.	2-12-45	3:00 P.M.—11:30 P.M.
Jones, Jessie B.	4-16-43	12:01 A.M.— 7:00 A.M.

The seniority date of Mrs. Harris, as shown on current seniority roster
is August 18, 1942.

On December 27, 1947, Carrier issued bulletin abolishing Mrs. Jones'
position effective with termination of assignment on December 31, 1947.

From Award No. 3603:

"Award 1397 is applicable here, 'The long delay in asserting this claim does not bar the employees from complaining of a violation of the contract by continuing course of conduct or otherwise. But, under the controlling and distinguishing facts of the case, such delay is cogent evidence that there has been no violation.' And as said in Award 1145, 'Although it must be conceded that the long-continued acquiescence of employees cannot operate to alter the scope rule of the agreement, such acquiescence is clearly relevant to a determination of the intent of the parties as to the applicability of the scope rule to the situation here in dispute.' See also Awards 1435 and 2090."

From Award No. 2012:

"It is the understanding of the referee, and probably of the general public, that these agreements are made for the purpose of promoting harmony in the relationships between labor and management in the railroad industry, and that neither party to the agreements intends nor expects that they shall be so construed and applied as to promote discord, inefficiency, or a wasteful application of the revenues of the railroad in its efficient operation for the benefit of the public as well as for the benefit of labor and management. Certainly the public, the employees, and the management all realize the importance of fair and just treatment of labor by management; and this is exemplified by the Act of Congress from which we derive our powers."

In light of the foregoing record it is the position of the Carrier that the contention of the Employees should be unqualifiedly dismissed, and the accompanying claim denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 9(a) and Rule 13 are controlling:

"Rule 9. Bulletins

(a) All new positions and vacancies will be bulletined within three (3) days after being created on becoming vacant. The bulletin will be posted on bulletin boards in each office and will show location, title, and description of the duties, assigned hours, days, meal period and rate of pay."

"Rule 13. Former Position Vacant

"When an employe is awarded a position, his former position will be declared vacant and bulletined."

The claim is that the position that Mrs. Annie K. Jones vacated, and the subsequent vacancies resulting therefrom when she was assigned to the position advertised on Bulletin No. 4 for January 21, 1948, should have been bulletined in accordance with Rules 9 and 13. The Carrier admits that it did not fully comply with Rule 9(a). The Carrier, however, relies upon an alleged verbal understanding between the then General Chairman, during that period, and one of the Company's representatives, and concludes that "the claimant's authorized representative waived the application of the Rules involved". It is a fundamental rule of contract construction that alleged oral understandings cannot be permitted to vary the terms of a written document.

An examination of the Carrier's letter of December 6, 1944, makes it clear that the only way that the Claimant could obtain a job was by bidding on a bulletined position. The subsequent communications of the Claimant or her doctor, including the letter of November 8, 1947, did not terminate this

arrangement that was entered into between the Carrier and the Division Chairman. It is significant that the Claimant did bid on the position that was bulletined on January 21, 1948. One of the vacancies that subsequently developed was on the 3:00 to 11:00 P.M. shift occupied by a junior employe, C. K. Weaver. It is significant that although the Claimant at one time had an objection to the third shift, she later performed work on the 3:00 to 11:00 P.M. shift. The Carrier did not deny the Claimant's statement that the Company representative informed her that she would have to "bid in a position to return to work".

The Board cannot uphold the Carrier's contention that the claim is belated and should be barred because no protest was made until approximately six months after the violation. In Award No. 3590, the Board stated:

"Delay, for some seven months, in the presentation of the claim is urged as a waiver of the applicability of the affected rule. Since there is no rule of the Agreement that limits the time within which claims may be submitted, if the claim is barred, it must be so by conduct of the Claimants. . . . Knowledge of a rule violation by two signal maintainers for the length of time complained of, is not sufficient to operate as an estoppel to recovery of the exaction. Moreover, responsibility for policing the Agreement is, primarily, that of Carrier."

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 Agreement was violated.

AWARD

Claims (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1950.