

Award No. 5169
Docket No. CL-5161

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**

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Rules of the Clerks' Agreement on March 26, 1949, and subsequent dates when the carrier:—

1. Issued Bulletin No. 350 dated March 26, 1949, Employees' Exhibit "A" advertising two (2) Timekeepers' positions without specifying a specific location as required by Agreement Rules, which location should be the Track Supervisor's Office at Jamestown, New York, where two (2) Track Supervisors are located.
2. Issued Bulletin No. 363 dated May 4, 1949, Employees' Exhibit "B" advertising position of Timekeeper without specifying a specific location as required by Agreement Rules which location should be the Track Supervisor's Office at Cuba, N. Y.
3. Issued Bulletin No. 367 dated June 14, 1949, Employees' Exhibit "C" advertising position of Timekeeper without specifying a specific location as required by Agreement Rules, which location should be the Track Supervisor's Office at Salamanca, N. Y.
4. Issued Bulletin No. 372, dated July 12, 1949, Employees' Exhibit "D" advertising position of timekeeper without specifying a specific location as required by Agreement Rules which location should be the Track Supervisor's Office at Salamanca, N. Y.
5. When prior and subsequent to May 4th, 1949, it assigned position of Timekeeper to a Track Laborer, an employe not covered by the Clerks' Agreement, and failed and refused to advertise position of Timekeeper at Salamanca, New York to clerical employes in accordance with the rules of the Clerks' Agreement.
6. That carrier shall correctly designate a specific location for the starting and finishing of each position of Timekeeper which shall be the Track Supervisor's Office at the points designated and incumbents of all positions shall be reimbursed at pro rata rate for time required to travel from designated locations to work locations and return of extra gangs retroactive to April 4, 1949, and

7. That carrier shall reimburse employe C. F. Hanna, the difference between his earnings since May 17, 1949 and what he would have earned on Timekeeper's position had it been properly advertised, including travel time to and from work locations, and by reason of carrier's assigning a Track Laborer to the position, and failing and refusing to bulletin the position to Clerical Employees.

EMPLOYEES' STATEMENT OF FACTS: Under date of March 26, the carrier issued Bulletin No. 350 advertising two positions of Timekeepers in extra gangs, one working east of Jamestown, N. Y. and the other working west of Jamestown, N. Y. The gang working east is under the direction of Track Supervisor L. E. Rodgers whose headquarters is at Jamestown, N. Y., where a Track Supervisor's Clerk is employed. The gang working west is under the direction of Track Supervisor S. J. Hewitt, whose headquarters is at Jamestown, N. Y. where a Track Supervisor's Clerk is employed.

Under date of May 4, 1949, the carrier issued Bulletin No. 363 advertising position of Timekeeper in extra gang working under direction of Track Supervisor J. F. McCarthy whose headquarters at Cuba, N. Y. where a Track Supervisor's Clerk is employed.

Under date of June 14, 1949, the carrier issued Bulletin No. 367 advertising position of Timekeeper in extra gang working under the direction of Track Supervisor whose headquarters is at Salamanca, N. Y. where a Track Supervisor's Clerk is employed.

Under date of July 12, 1949, the carrier issued Bulletin No. 372 advertising position of Timekeeper in extra gang working under direction of Track Supervisor whose headquarters is at Salamanca, N. Y. where a Track Supervisor's Clerk is employed.

Prior to the advertising of position of Timekeeper covered by Bulletin 363 on May 4, 1949 the carrier utilized the services of a Maintenance of Way Laborer, an employe not covered by the Clerks' Agreement, until the position was awarded to Clerk C. F. Hanna. After being awarded the position Mr. Hanna assumed that his starting and finishing time as outlined in the Bulletin would be at the Track Supervisor's Office at Cuba, N. Y. Instead, he was instructed to report at a Toolbox Location at Rush Creek, N. Y. This being impossible for him to accomplish he bid back onto his former position of Crew Caller. The Timekeeper's position was not readvertised to Clerks, but was filled arbitrarily by the carrier with a Track Laborer, an employe not covered by the Clerks' Agreement. Had the position been properly bulletined, Mr. Hanna would have been furnished transportation the same as extra gangs, to and from location where extra gangs were working.

Employe G. C. Buntebah was assigned to Timekeeper's position working west of Jamestown, N. Y. covered by Bulletin No. 353 and was required to report at an assembly point of the extra gang whereas he should have reported at Jamestown and been furnished transportation to and from the extra gang location.

Each Track Supervisor has jurisdiction over specific sections of track and is responsible for the maintenance thereof. Each Track Supervisor has a clerk whose duties generally are to maintain all records in connection with the maintenance of the track under the jurisdiction of the Track Supervisor, including the handling of time records, work and material reports, requisitions, employment papers and other related work. The employes attach as Employees' Exhibit "E", copy of bulletin advertising position of Track Supervisor's Clerk to indicate the similarity of duties of such position with timekeeper's position. All of the records made, secured and maintained by the Timekeepers are incidental to and augment the work of the Track Supervisor's Clerk and are referred to the Track Supervisor's Office for his file and preparation of reports

The last sentence of Rule 7(d) reads: "Bulletined positions may be filled temporarily pending assignment and in the event that no applications are received, positions may be filled by Management." In accordance with this provision and pending assignment the Foreman utilized the service of his own forces to assist in keeping his time records, etc. After Hanna declined the position an employe of the gang was thereafter assigned in accordance with Rule 7(d).

Carrier has shown that only one application was received, therefore, after Hanna's declination there were no other applications to be considered and accordingly the position was filled as provided by the rules.

Bulletins complained of, namely: 350, 363, 367 and 372, were prepared and issued in substantially the same manner as those issued in prior years.

The Carrier has shown that there is no merit to this claim. It is simply an attempt on the part of the Organization to gain through the method it is here taking a rule that it has not obtained by negotiation. Such a request, if granted, would create a preposterous situation and would serve only to defeat the exact reason for using clerical employes to assist the Gang Foreman with his record work. Thus it would force the Carrier to change its practice.

The Carrier submits that the claim is without merit and should be denied in its entirety for the reasons set forth herein and the following:

1. Carrier has not violated any agreement rule.
2. There is no rule, understanding or any thing else that requires that the starting point of a position must be the finishing point. Likewise, there is no rule or understanding that the Employes will have the right to designate the work location—that is a right reserved to Management.
3. Claimant Hanna declined the position of timekeeper as advertised in Bulletin No. 363 and thereafter had no right or claim to the position.
4. Bulletins 350, 363, 367 and 372 were prepared and issued in accordance with rule requirements. When an employe bids for and is assigned to a position such employe is obligated to take the conditions stipulated in the bulletin.
5. After Hanna declined the position it was filled in accordance with Rule 7(d).
6. There has been no violation of the applicable agreement and the claimant is not entitled to the compensation which he claims.

(Exhibits not reproduced).

OPINION OF BOARD: The System Committee of the Brotherhood claims that the Carrier has violated the Rules of the Clerks' Agreement in its manner of handling timekeepers for extra gangs of Maintenance of Way employes.

As to the Carrier's contention that it was not obligated to assign the work to employes of the clerical forces, it is wrong. If the foreman of any such gang could do it all himself, that would be permissible, as it is work incident to his position. But if there is more of this work than he can do, that is, the handling of time records, work and material reports, and other similar work related to the gang, it must be assigned to clerical forces.

There is nothing that we can find in the Rules of the parties' Agreement requiring the position of a timekeeper in an extra gang of Maintenance of Way workers to be located in the Track Supervisor's Office. Nor do we find

any logical or compelling reason why the Carrier should be required to locate it there. It would seem that by the very nature of the work of the gang to which the position of timekeeper is here attached that the timekeeper's location would be the same as that of the gang. There is, of course, nothing to prevent the Carrier from placing it in the Track Supervisor's Office. This, it appears, was subsequently done on some divisions.

As to the contention that the bulletin did not sufficiently specify a specific location for the position, within the intent and meaning of Rule 7 (a) of the parties' Agreement effective December 1, 1943, amended July 1, 1945, and form bulletins prepared for that purpose, we think the following from our Award 4627 defines the requirements thereof. Therein we said: "* * * the information contained in the bulletin must be definite enough to adequately describe the position so that employees can determine if they desire to bid for the position."

Bulletin 363, dated May 4, 1949, which advertised the timekeeper's position on which claimant C. F. Hanna bid, described the location as the "Re-ballast Gang Allegany Division" to handle the work "at points where such gangs may be located in a district from Cuba Junction to River Junction and Cuba Junction to Hornell, N. Y.", with a note informing that "While on River Line, assembly point will be at Rush Creek, N. Y."

We find this information definite enough as to location to adequately inform any employee interested therein to determine if he desired to bid for the position. When, after Hanna bid thereon and he was assigned thereto, he declined the position, he had no rights thereto by reason of his bid.

We think the record shows a situation of fact, there being no clerical forces available, which brings it within the provisions of Rule 7 (d) of the parties' effective Agreement and that Carrier was thereby authorized to use a laborer, Maintenance of Way employee, to do the work which he performed.

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 hold:

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 has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of December, 1950.