

Award No. 5602

Docket No. CL-5536

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the Carrier violated the Clerks' Agreement:

(a) When on July 5, 6 and 7, 1950, the Carrier called and used a junior employe (Mr. E. D. Bendicenti) instead of calling and using Mr. J. E. Gibbons who is senior to Mr. Bendicenti, to fill the position of Assistant Loss and Damage Freight Inspector, which was one of many positions abolished because of a short Switchmen's strike, which occurred on connecting lines.

(b) That Mr. J. E. Gibbons claimant be paid three (3) days pay at the rate of \$13.09 per day, because Carrier called and used a junior employe.

EMPLOYEES' STATEMENT OF FACTS: Due to a short Switchmen's Strike occurring on connecting lines of the S.P. & S. Railway Company, the Carrier saw fit to abolish almost all of its Accounting Department forces by posting a bulletin advising employes that effective July 3, 1950 they would be placed on the Extra List. (See Employees' Exhibit "A".)

About two days later—July 5, 1950—the Carrier discovered it needed the services of an Assistant Loss and Damage Freight Inspector and from a group of over thirty Accounting Department employes forced to the extra list by the Carriers abolishment of their positions. The Carrier elected to call back to work one of the junior employes and used this junior employe as an Assistant Loss and Damage Freight Inspector on July 5th, 6th and 7th, 1950. July 8th was Saturday, July 9th was Sunday and office was closed. On July 10, 1950, all employes were returned to the same positions they occupied on June 30, 1950.

POSITION OF EMPLOYES: This dispute involves the application of the Clerks' Agreement effective April 1, 1942, between the Brotherhood and the S.P. & S. Railway Company.

We contend the Carrier violated the Agreement when it called a junior employe from the extra list instead of calling claimant J. E. Gibbons. In discussion of this claim with Carrier it was admitted that claimant Gibbons was qualified for the position of Assistant Loss and Damage Freight In-

"Extra list employees must keep on file with the Superintendent or designated official in the general offices, the address or location at which they are to be called."

Having failed to comply with this provision of Rule 26 (b) there was no obligation on the Carrier to call Mr. Gibbons from the extra list for service and the exchange of correspondence previously quoted clearly indicates this to be the principal reason for not calling claimant, as well as the basis for denying the claim.

Claims were progressed by the claimant and the Brotherhood under Rules 19 and 26. During the hearing conducted by the Vice President and General Manager on August 11, 1950 General Chairman of the Brotherhood withdrew Rule 19 as a basis for claim as abolishment of positions did not constitute a reduction in force as contemplated by Rule 19. The claim, therefore, has been progressed entirely on the merits of Rule 26.

The Carrier has not taken the position that claimant was not qualified to perform service required of an Assistant Loss and Damage Freight Inspector although he had never worked this position. Had he registered his address, as provided in Rule 26 (b), he would have been called.

Rule 26 (b) further provides in part as follows:

"Employees on extra list not already at work will be called for service for which qualified in accordance with their seniority."

During hearing conducted August 11, 1950 General Chairman H. M. Dunlap agreed it would have been proper to have called the senior available and qualified extra employee on dates of claims. The senior qualified employee was Mr. L. W. Hawes (Seniority date June 8, 1900) in whose behalf no claim has been presented.

The Carrier has shown that claimant failed to make himself available for calls when he neglected to register his address, as provided in Rule 26 (b), and as said claimant was not the senior qualified employee as further required by Rule 26 (b), the Carrier respectfully requests that the claim be denied.

All data in support of Carrier's position in this case has been presented to the employees and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: By bulletin dated June 29th, 1950, because of a short Switchmen's strike on connecting lines, Carrier abolished a considerable number of positions, among which was that of Loss and Damage Claim Investigator B to which claimant was regularly assigned. At the time of the abolishment of his position, claimant advised Carrier of his election to go on the extra list. In the time elapsing between the abolishment of this position and its reestablishment on July 5, 6, 7 there was need for the services of an Assistant Loss and Damage Freight Inspector. Carrier called an employee junior to claimant off the extra list to fill the temporary vacancy. Employees file claim as indicated above.

During the course of the progress of this claim on the property, it appears that in the first instance the Employees relied on Rules 19 and 26 in support of this claim. When the claim was progressed to the Vice President and General Manager, it was agreed that Rule 19 (Displacement) was not involved and that Rule 26 (b) was the applicable rule. Carrier contends (1) the claim is not valid because claimant technically violated Rule 26 (b) in that he failed to record his address at the time of the abolishment of his position, and (2) that there were other employees senior to claimant who were qualified for the position of Assistant Loss and Damage Inspector.

It is not denied that claimant was qualified to perform the work involved nor that he was senior to the employee actually called.

The applicable provision of Rule 26 (b) reads as follows:

"Extra list employees must keep on file with the Superintendent or designated official in the general offices, the address or location at which they are to be called."

It is to be noted that Rule 19 (the Displacement Rule) provides, among other things, that employees wishing to avail themselves of the privilege of being returned to service when forces are increased must file their addresses with the proper official at the time of reduction. As can be seen from the quoted part of Rule 26 (b), there is no such specific requirement in Rule 26 (b). It is asserted by the Employees in their original submission that claimant and all of the other employees placed on the extra list by the Carrier's unilateral action have had and still have their names and current addresses correctly filed with their designated official. This is not denied by Carrier. In the absence of a specific provision in the rule requiring a restatement of that information by the employee when he reverts to the extra list upon his election otherwise duly made, we fail to see where the employee has not complied with the rule. Of course, if the address or location on file with the proper official is not current and because thereof an employee misses a call, the Carrier would be protected from a claim on his behalf.

With respect to Carrier's second contention, it appears that Rule 26 (b) requires that employees on the extra list not already at work will be called for service for which qualified in accordance with their seniority. The fact that there were other qualified employees senior to claimant on the extra list who might have been available for this service is no bar to the assertion of a claim on his behalf. That principle is firmly established by numerous Awards of this Board. (See Award 4544 and awards cited therein.)

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of January, 1952.