

Award No. 6134

Docket No. CL-6141

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

GRAND TRUNK WESTERN RAILROAD COMPANY

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

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

(a) Carrier violated the current Agreement effective September 1, 1949, and supplements thereto between the parties when it failed to call Yard Clerk A. J. Herr at Battle Creek, Michigan, to work a short vacancy on a Call Boy's position on March 25, 27, April 14, 26 and 28, 1951, and

(b) that Yard Clerk A. J. Herr shall be paid a day's pay at the time and one-half rate of the Call Boy's position for March 25, 27, April 14, 26, 28, 1951, and subsequent thereto until the condition is corrected.

JOINT STATEMENT OF FACTS: Employee A. J. Herr was regularly assigned to a Yard Clerk's position at Nichols Yard, Battle Creek, Michigan, during the period of this claim. His assigned hours are from 8:00 A.M. to 4:00 P.M. and his assigned work week is Monday, Tuesday, Friday, Saturday and Sunday, with assigned rest days of Wednesday and Thursday.

The Call Boy's position in question was assigned to work from 4:00 P.M. to 12:00 Midnight. The assigned work week of the Call Boy's position was Sunday through Thursday with Friday and Saturday as the assigned rest days. On March 25, 27, April 14, 26 and 28, 1951, the regular incumbent of this Call Boy position was absent, which created a short vacancy on those days. There were no extra or unassigned employees available on the dates in question to fill the vacancies thus created on the position.

The Carrier called a regularly assigned employee to fill the vacancies in question, who was junior in seniority to Yard Clerk A. J. Herr.

The Call Boy position covers considerable messenger service. The primary duties of Call Boys are calling members of train and yard crews who do not have telephones and who reside in the mile circle from yard office. Also, they are used for various services or messenger work between terminal offices, passenger station and freight offices. The Carrier considers it neces-

This rule shall not apply to laborers or other than clerical positions, except as may be agreed upon hereinafter.

In case of inability to secure a competent employe in the seniority district the Carrier will have the prerogative to select an employe to fill the new position or vacancy, however an endeavor will be made to secure such employe from the particular branch of service wherein the new position or vacancy occurs.

"Notification—Rule 47

"When time is claimed in writing and such claim is disallowed, the employe making the claim shall be notified in writing and reason for non-allowance given.

"Machines Furnished—Rule 66

"Typewriters and other office equipment devices will be furnished by the railroads at offices where the Management requires their use."

Rule 7 applies to employes only after they are awarded positions under Rule 4 and does not enter into the question of their selection. Rule 9, does not apply to the one-day vacancies here involved, which come under the terms of Rule 11—Short Vacancy, previously quoted in Carrier's Position. The employes, in the 4th paragraph of their Position charge the Carrier with violating Rule 9, in bulletining positions. This alleged violation occurred in 1944. Whether or not a violation of Rule 9 occurred is not here in dispute, however the position involved was not a Call Boy position, and was in a different seniority district, and Carrier denies that a violation occurred. Rule 47 is cited by the employes without explanation of how they consider it was violated, and Carrier denies violating that Rule. Rule 66, which refers solely to office equipment, is not applicable to the instant case.

The employes have stated in their Position that there is no record of the Carrier's ever disqualifying an employe for not owning an automobile or other means of transportation. However, there is no record of a previous case of a Call Boy refusing to provide himself with transportation. In this connection, the Board is referred to Third Division Awards 1636 and 1637, where the Board held the practice of messengers supplying their own transportation was not in violation of the Clerks' Agreement.

This claim should be denied inasmuch as the rule cited by the employes do not support their contentions.

All data contained herein have in substance been submitted to the employes and made a part of this claim.

OPINION OF BOARD: After reviewing the data submitted by the parties, it is our opinion the claim should be sustained at pro rata rate of pay, without establishing a precedent.

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 claim should be sustained in accordance with Opinion.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 13th day of March, 1953.