

Award No. 6876

Docket No. CL-6943

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

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 Employees:

(1) That Management violated rules of Agreement between the Carrier and Brotherhood effective January 1, 1950, in not assigning the senior available clerk, Mr. Francis X. Flynn, in Seniority District No. 29 comprising all employees in St. Louis Union Station under the jurisdiction of the General Passenger & Ticket Agent to fill the temporary vacancy of absent clerical employes Charles A. Vahey's position No. 16 commencing on Sunday, August 30, and extending through September 20, 1953.

(2) That Mr. Francis X. Flynn be paid the difference between the rate of pay of his regular assignment (Information Clerk, rate \$14.49 per day) and that of Ticket Selling Position No. 16, rate of pay \$16.23 per day, period August 30 to September 20, 1953.

EMPLOYEES' STATEMENT OF FACTS: All clerical employes in the St. Louis Union Station under the jurisdiction of the General Passenger and Ticket Agent are listed on a common seniority district (No. 29) pursuant to provisions of Rule 5 of our Agreement with the Carrier effective January 1, 1950.

On Thursday, August 20, Mr. Charles A. Vahey, regular occupant of Ticket Selling Position No. 16, notified the General Passenger and Ticket Agent that he was entering the hospital for a surgical operation and was not certain just when he would be able to return to work (Employees' Exhibit 1).

From August 20 to August 29, the Carrier called regular employes who were on their rest days to fill Mr. Vahey's vacancy.

On August 30, 1953, Mr. E. C. Hinkel, regular assigned occupant of a clerical position in the Reservation Department was assigned to Mr. Vahey's vacancy.

fill the vacancy it would have been necessary to move someone from the Reservation sub-department to fill his place, thus disturbing both sub-departments instead of one.

The Employees contend that Rule 10(c) has no connection with the claim, which cannot be supported. They want to disregard the rule despite the fact that it has specific application to rearrangement of forces in filling short vacancies, which is the question involved in this case. It is a well settled fact, the Board having held so many times, that one rule to the exclusion of all others having bearing on the subject cannot be successfully advanced as determinative of the question involved; all must be considered.

Our action was not in violation of the applicable rules of the agreement and the claim should be denied.

All data submitted in support of Carrier's position has been presented to the duly authorized representative of the Employees and made a part of the particular question in dispute.

(Exhibits not Reproduced).

OPINION OF BOARD: On Thursday, August 20, 1953, Ticket Selling Position No. 16 became temporarily vacant for the reason that the regular occupant was to be hospitalized. From August 20 to 29, 1953, the temporary vacancy was filled by calling regular employees on their rest days. On August 30, 1953, E. C. Hinkel was assigned to the position. Hinkel was junior to the claimant and the latter claims he should have been assigned. The claim is for the difference in pay from August 30 to September 20, 1953.

It is conceded that all clerical employees at the St. Louis Union Station under the General Passenger and Ticket Agent are on a common seniority roster. It is also conceded that claimant is senior to Hinkel. The Carrier denied the claim solely on the basis of the language used in Rule 10(c), current Agreement, which provides:

"Moves in connection with short vacancies will be definitely limited. Heads of departments and local committees will handle in a manner that will cause the least disturbance in the office or department."

It is the position of the Carrier that as it was able to fill the temporary vacancy by making a single move, that it could properly disregard seniority. The position of the Carrier is not a tenable one.

The first sentence of Rule 10(c), standing alone, is lacking in definiteness as to its meaning. The second sentence gives it a meaning which is consistent with other rules of the Agreement.

The effect of Rule 10(c) is: Seniority will be recognized except where the heads of departments and local committees have agreed upon a handling that will cause the least disturbance in the office or department. The rule imposes an obligation on the local committee to accomplish this result and, in case of arbitrary action on its part, this Board could properly take corrective measures on an appeal. But where, as in this case, the local committee was given no opportunity to agree to an arrangement contemplated by the rule, the Carrier is required to recognize the seniority rights of employees affected.

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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 4th day of February, 1955.