

Award No. 6889

Docket No. CL-6940

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader—Referee

PARTIES TO DISPUTE:

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

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS**

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

(1) Carrier violated the Clerks' Agreement when it failed to fill the position of Mrs. Clara Smith, Clerk-Miscellaneous Accounts, in office of Auditor Disbursements, Tyler, Texas, during her absence from September 22, 1950, to and including October 3, 1950.

(2) Mr. Carrold Little be reimbursed for the difference between his daily rate of \$12.33 and Mrs. Smith's daily rate of \$13.18 for eight days, September 22 through October 3, 1950.

(3) Mrs. Billie Rowland be reimbursed for seven days, September 22 through October 2, 1950, at rate of \$12.33 daily.

EMPLOYES' STATEMENT OF FACTS: (1) Mrs. Clara Smith is regularly assigned to the position of Clerk-Miscellaneous Accounts, in office of Auditor Disbursements, Tyler, Texas, 8:00 A. M. to 5:00 P. M., off days Saturday and Sunday, daily rate \$13.18.

Due to the serious illness of her husband, it was necessary for her to be absent from duty eight working days, from September 22 through October 3, 1950. In the past it has been the practice to pay an employe for such absence when the vacancy was not filled, but Mrs. Smith was not paid for the eight days, in line with a new policy adopted by Carrier about January 1, 1949.

(2) Carrier did not pay Mrs. Clara Smith for the eight days she was absent from duty and also failed to fill her position during this period.

Mr. Carrold Little is a regularly assigned Key Punch Operator in office of Auditor Disbursements, Tyler, Texas, 8:00 A. M., to 5:00 P. M., off days Saturday and Sunday, daily rate \$12.33. He had, prior to September 19, 1950, held a position of Roadway Timekeeper, \$12.61 per day. Mr. Little worked the position of Mrs. Smith for five months during 1948 and no complaint was made concerning the efficiency of his work.

The facts cited show that the claim is without merit in any respect, and Carrier respectfully submits that it should be denied.

All data herein has been presented to representatives of the Employees.
(Exhibits not reproduced.)

OPINION OF BOARD: This dispute arises from Carrier's action in blanking a position of Clerk-Miscellaneous Accounts, Auditor of Disbursements office, Tyler, Texas, during all but one day of the period from September 22, 1950 through October 3, 1950, when Mrs. Clara Smith, the regular occupant, was absent by reason of an illness of her husband.

An interpretation is sought of the first sentence of Rule 11-1 which reads as follows:

"A new position or vacancy of less than thirty (30) calendar days shall be considered temporary and shall be filled without bulletining. * * *

It is contended by Petitioners that Carrier places an improper interpretation on the language set out above by contending that the mandatory provision is applicable to the portion "without bulletining." Also that awards cited by Carrier relate to permissive rules which is not the case here. And that the corresponding rule in the former Agreement, Rule 12, was permissive, providing

"* * * and may be filled without bulletining."

Cited in support of its position are Awards 1754, 6719 and others, including Awards 1411 and 3819.

That on the day Carrier did fill Mrs. Smith's position it did so by ignoring seniority rights, citing Award 5255.

Respondent Carrier takes the position that the change from "may" to "shall" in the language of Rule 11-1 was never intended, and did not abrogate Carrier's traditional right to fill or not fill temporary vacancies. That the word "shall" was inserted in Rule 11-1 for the purpose of restricting Carrier's former optional right to bulletin temporary vacancies. Cited to support the position taken are Awards 5528 and 6142 and it is stated that Award 6719 is not in point in the matter under consideration in this claim.

We deem the change of the words "may" to "shall" in Rule 11-1 to relate to bulletining and not as contended for by Petitioners. There is no specific provision in the Agreement which makes it mandatory to fill or not fill temporary vacancies. In the instant case the situation arose by Mrs. Smith being absent and was not an affirmative act of Carrier. If Employees intended this rule to read that Carrier was directed to fill such a vacancy then the proper wording was not inserted in the rule, as the sentence now reads it relates exclusively to the bulletining and does not include a mandatory direction that the position shall be filled.

Therefore Claim (1) fails, we find no violation of the Agreement. Likewise the same reasoning defeats Claim (3). As to Claim (2) where the Carrier filled Mrs. Smith's position with an employee junior to Claimant Little on October 3, 1950, the claim is good for that day only and will be allowed.

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

There was no violation of the Agreement except as stated in the Opinion.

AWARD

Claims (1) and (3) denied. Claim (2) sustained to extent stated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 17th day of February, 1955.