

Award No. 7253

Docket No. CL-7122

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

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

(a) That the Carrier violated the agreement between the parties when it treated six positions created in its Freight Department in December, 1951, as other than temporary positions under the bulletining, assignment and other rules governing the application of seniority, and;

(b) That all employees involved and particularly L. H. Vanderwalker and C. E. Olson should have been allowed and/or required to move back to their former positions under Rule 13 when the six positions referred to in paragraph (a) were abolished, and;

(c) That L. H. Vanderwalker and C. E. Olson shall be paid as penalties for violation of the agreement, for the period beginning December 26, 1951, and ending with such date as it may be determined that the violation alleged in paragraphs (a) and (b) have been terminated, as follows:

(1) At the overtime Yard Clerk rate for all hours worked outside the assigned daily hours of the positions they held as of December 5, 1951, and;

(2) For the difference between straight time Yard Clerk rate paid and overtime for each day worked on a rest day attaching to the position held as of December 5, 1951, and;

(3) For eight hours at straight time Yard Clerk rate on such days they were not allowed to work which were work days attaching to the positions held as of December 5, 1951.

Note—For details as to application of claim (c), See Employees' Exhibit C, pages 1 and 2.

EMPLOYEES' STATEMENT OF FACTS: The dispute and claim in this case originated from the same set of facts as those in another case

RULE 9

INDEFINITE VACANCY

"Positions or vacancies of indefinite duration need not be bulletined until the expiration of thirty (30) days from the date of employment or vacancy."

Rule 14 was quoted in Statement of Facts.

The Carrier cites evidence contained in Docket CL-7004 that the positions were of indefinite duration.

Under Rule 9 it is permissive and at the Carrier's election whether the positions are bulletined or not. If the Carrier requires service over and beyond that which the regular force can fulfill then the positions should be bulletined. (Award 6036) Carrier's Exhibit "A".

The positions were awarded the senior employe in the Department making application as required by the Bulletin and Seniority Rules. The positions were filled temporarily pending the outcome of the bidding which is permissible under Rule 7.

At the expiration of the requirement for the additional force, to augment the regular force, proper notice was posted abolishing the positions. The amount of force necessary is a managerial function, (Award 6022) so long as they abolish the positions in fact, (Award 6099)—Carrier's Exhibit "B".

A reduction in force puts into operation Rule 14 and Rule 14 does not restrict the full exercise of seniority rights. The Carrier would be vulnerable for claim if such an attempt were to be made.

Study of Docket CL-7004 and this case together will reveal that all of the pertinent rules of the Agreement have been complied with and Employee's claim should be denied.

All of the subject matter contained herein has been handled with the Organization in conference or by correspondence.

(Exhibits Not Reproduced)

OPINION OF BOARD: These claims are an outgrowth of actions taken by the Carrier augmenting the clerical force to handle mail during the Christmas season of 1951. For this purpose the Carrier required 6 positions to take care of work that could not be performed by the regular force.

Award 6891 (Docket CL-7004) determined that when the Christmas rush began on December 6, certain of these positions had not been properly filled in accordance with the first paragraph of Rule 2 as interpreted by the parties and the seniority provisions of the Agreement.

This Docket (CL-7122) involves the situation when the Christmas rush ended on December 26 and the 6 positions were abolished. Although not required by either Rule 8 or 9 to do so, the Carrier bulletined the 6 positions on December 5; and Claimant Olson bid in and was assigned to one of them on December 15; whereupon the position vacated by him was bulletined on December 15 and was bid in and assigned to Claimant Vanderwalker on December 21; whereupon the position vacated by Claimant Vanderwalker was bulletined on December 21 and was bid in and assigned to Claimant Olson on December 27.

In effect what happened was that when the Carrier abolished the 6 new positions on December 26, the two Claimants found themselves with their regular positions exchanged and they were not returned to their status quo on December 5.

The essential question is whether Rule 13 or Rule 14 governs.

First. The Agreement makes careful definitions of "short" (Rule 8), "indefinite" (Rule 9) and "long" (Rule 10) vacancies or positions. A position is not "long" unless it is "known to be of more than thirty (30) days duration." Whether a position is "short" depends upon whether it can be determined with reasonable certainty at the outset if the position will endure for 30 days or more.

We accept the Carrier's determination that the Christmas mail rush started December 6. Whether these 6 new positions were "short", therefore, depends upon whether it could have been determined with reasonable certainty on December 5 that they would be needed 10 days beyond Christmas day.

It would seem to be common knowledge that Christmas mail rushes definitely wane, if they do not altogether terminate, before January 4. While the record shows a large volume of Christmas mail in 1951, there is no evidence in the record that augmentation of the clerical forces of the kind involved here ever has been required as much as 10 days beyond Christmas Day; and there is ample evidence in the record to support the conclusion that these 6 positions were known to be "temporary" within the meaning of Rule 8.

This conclusion is fortified by the Carrier's letter of July 9, 1938 confirming the Interpretation dated July 8, 1938 of the first paragraph of Rule 2 as well as by the conclusion reached in Award 6891.

Paragraph (a) of the claim must therefore be sustained.

Second. The conclusion that these 6 positions were temporary assignments within the meaning of Rule 8 requires the conclusion that this was not a reduction in force within the meaning of Rule 14 but rather a case of "status when relieved from temporary assignment" within the meaning of Rule 13.

The actions taken by the Carrier prevented Claimants from exercising their rights under Rule 13.

Paragraph (b) of the claim must therefore be sustained.

Third. On familiar principles paragraph (c) should be sustained at pro rata rates and not at the overtime rate.

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

Claim sustained in accordance with the foregoing opinion.

AWARD

Claim sustained in accordance with the foregoing opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 19th day of March, 1956.