

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY**

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

(1) The Carrier shall be required, except to the extent permissible under Rule 2(e), to discontinue assigning non-clerical work to clerical positions or vice versa.

(2) Employe Mary B. Hickey shall be compensated for all loss suffered during the period September 22, 1950 to October 29, 1951.

(3) Employe G. E. Harmon, regularly assigned Baggage man with hours 9:05 P. M. to 6:15 A. M. and any and all other employes who perform work on such baggage man position be compensated at the time and one-half rate for forty-five (45) minutes each day that the File Clerk was required to perform the Baggage man's work, retroactive to September 22, 1950.

EMPLOYEES' STATEMENT OF FACTS: There are two regular baggage man positions at Mason City, Iowa which are non-clerical positions. The employes obtain those positions by means of their non-clerical seniority. These baggage men handle the headend lading on Train No. 11. For many years there has also been in existence in the Superintendent's office at Mason City, Iowa, position No. 11, classified as File Clerk.

Effective January 16, 1946, a new Rules Agreement was made between the parties, Rule 9(c) of which reads as follows:

"Copies of all bulletins will be furnished to local, division and general chairmen."

Subsequent to the date of the new Agreement, bulletins have been furnished to the General Chairman, and a review of those bulletins shows that Position No. 11 has been bulletined on numerous occasions. We attach as Employes' Exhibits "A", "B", "C", "D", "E" and "F" a copy of the bulletins advertising Position No. 11 since January 16, 1946.

Carrier from adding to or taking away any of the duties of a position. This is one of the prerogatives of management and as we said in Award 5331, 'the assignment of work necessary for its operations lies within Carrier's discretion', such action by Carrier applies to the claim before us."

We also quote the following from the Opinion in Award 5331 to which reference is made in the above quotation:

"Except insofar as it has restricted itself by the Collective Bargaining Agreement or as it may be limited by law, the assignment of work necessary for its operations lies within the Carrier's discretion. It is the function of good management to arrange the work, within the limitations of the Collective Agreement in the interests of efficiency and economy. There is no rule in the applicable Agreement which requires that work once assigned on an overtime basis may not be assigned at straight time rates. Where the Carrier can get the work done at straight time rates without violating a provision of the Agreement it is within its province to do so."

At the beginning of the Carrier's position we stated this dispute involved the question as to "whether or not a clerk, during his regular 8 hour tour of duty, can perform, as part of the regularly assigned duties of his assignment, non-clerical work which amounts to approximately 45 minutes per day". We feel that under the facts and circumstances existing as outlined in the Carrier's presentation and in view of the schedule rules, that question must be resolved in the affirmative, and we respectfully request that the claim be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Before proceeding to consider this claim on its merits we must consider whether Organization's claim in behalf of Mary B. Hickey is properly before us.

On August 2, 1950, Carrier advertised a vacancy in the position of File Clerk in the Superintendent's Office.

The bulletined duties were described as follows:

"Applicant must be a typist, perform general filing and clerical work and handle mail and baggage for Train No. 118."

On August 18, 1950, R. M. Irons was appointed to the position. On September 27, 1950 he was inducted into the armed forces and the File Clerk position was vacant.

On September 13, 1950 the File Clerk position had again been bulletined as vacant. The duties were described in the same language used in the bulletin of August 2, 1950, Supra.

Mary B. Hickey, the principal claimant here, bid on the position and it was awarded to her by Clerks' Bulletin No. 112, issued September 22, 1950.

The following day, September 23, 1950, Claimant Hickey addressed the following letter to Carrier's Superintendent:

"I wish to withdraw my bid on bulletin No. 117, position of file clerk in the Superintendent's Office Mason City. Position No. 11 with the understanding I do not forfeit any seniority rights."

Regardless of what Organization now claims her reasons to be for such withdrawal, the fact remains she did, in truth and in fact, withdraw her bid

for the position in question—a position Carrier had awarded her the day previous, and she ascribed no reason for her action.

Accordingly, we hold that Rule 9(n) of the Agreement automatically became operative. It reads, in part, as follows:

“Should an employe withdraw his application after he has been assigned to a permanent position by bulletin, such position will be rebulletined. The employe withdrawing his application will be considered as having relinquished that position and will be governed by the provisions of Rule 8(b). * * *”

Therefore, Rule 9(n) providing that Mary B. Hickey “relinquished” the File Clerk position in question without reason, we must and do conclude that neither Mary B. Hickey nor the Organization has any valid grounds upon which to initiate or process a claim, based on such position, before this Division.

The claim will be denied in its entirety.

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 not violated.

AWARD

Claim denied in its entirety.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 7th day of February, 1958.