

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

D. E. LaBelle, Referee

PARTIES TO DISPUTE:

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

THE LAKE TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated rules of the Clerks' Agreement at Lorain, Ohio, when on July 22, 1957, and subsequent dates, Carrier awarded position No. 138 Revenue Clerk to Donald Jesse, a junior employee, and

That Carrier as a penalty for violating the Agreement shall compensate employee Robert Dunlavey, Revenue Clerk, for a day's pay in addition to all other earnings for July 22, 1957 and all subsequent dates until such time as violation complained of is corrected. (Claim No. LT-41)

EMPLOYEES' STATEMENT OF FACTS: For many years, it was the practice for employees in the Revenue group to bid from position to another in order to work on various revenue books, each employee being given a specific assignment of work. Through this medium, employees were able through the bidding process to move from one book to another and thus acquire, based upon seniority rights, knowledge of all the work done in the Revenue group.

During the year 1957, at the request of the Organization, all positions covered by the Clerks' Agreement were numbered for identification purposes. At the time this grievance arose, the positions were numbered and had the duties regularly assigned to them as follows:

Position No. 133—Posts all coal inbound and outbound from transfer slips in a ledger, also computes per diem and demurrage in coal ledger. Posts from transfer slips all inbound cars on cards for further processing by Demurrage Clerks. Keeps a daily report on all coal unloadings and classes of inbound cars and presents this report totaled at close of month's work to Car Accountant.

Position No. 134—Helps sort switch orders from Yard Offices as to times and conductors. Computes all switching charges of National Tube and leased cars on switching orders. Pulls outbound cards found on interchange slips,

was the incumbent of an identical position in the pool force of Revenue Clerks, there could be no violation of Rule 23. Claimant's seniority rights were not affected, nor could a change from one position to an identical position be considered a promotion. The title, duties, location, rate of pay, assigned hours of service, rest period and rest days on both positions were the same; and it follows that to require the Carrier to honor claimant's bid from one position to another would only serve to set up a needless chain of advertising of vacancies without benefit to any person, including claimant here. Under the circumstances, no possible penalty could accrue to the claimant.

For the foregoing reasons, it is respectfully submitted that this claim must be denied.

It is hereby affirmed that all data submitted in support of the Carrier's position have been submitted in substance to the employees or their duly authorized representatives and made a part of the particular case in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Seven Revenue Clerks' positions were established by Carrier by Bulletin No. 25 dated November 24, 1955, effective December 1, 1955, in its Accounting Department, at Lorain, Ohio. The title, location, rate of pay, assigned hours of service, rest period and rest days on all seven positions were the same. The description of the positions as set forth in said Bulletin was:

"The preponderance of duties are: Maintaining records of Demurrage, Revenue and Per Diem."

Following the position of said bulletin, Organization, through Mr. J. J. Schruer, its Chairman, on December 1, 1955 wrote a letter to Mr. T. D. Hastings, Vice President of Carrier, reading as follows:

"Reference is made to conference held in Lorain, Ohio on November 18, 1955 and my letter to you dated November 22, 1955 in connection therewith.

I am now in receipt of copy of Bulletin No. 25 advertising position of Revenue Clerk and behind the title is shown 'Seven Positions'.

"It is my opinion that this is a violation of Rule 25 which provides for advertising each individual position. Likewise, it is my view that each Revenue Clerk position should be identified so that the employees would know what position they are submitting bids on as for instance—Revenue Clerk No. 1 or No. 2 or No. 3 or No. 4 or No. 5 or No. 6 or No. 7. As a matter of fact, every job on the Lake Terminal Railroad should be numbered so that each position is identified."

On January 5, 1956, Vice President Hastings replied to Mr. Schruer's letter, in part as follows:

"We have no objection to identifying the Revenue Clerks positions when advertised as you suggest—Revenue Clerk No. 1 or No. 2, etc., provided it is understood the work coming in under these positions is pooled in accordance with our understanding when the positions were agreed upon."

Organization in its second submission quoted only the part of Mr. Hastings' letter ending with words, "Revenue Clerk No. 1 or No. 2." Carrier in its reply to Organization's submission has supplied the remainder of Mr. Hastings' letter. There is no denial by Organization that Mr. Hastings' letter contained the remainder of his letter as set forth herein. There is nothing in the Record to indicate any disagreement by Organization with statements set forth by Mr. Hastings in the excerpt from his letter, hereinbefore quoted.

No exception was taken by Mr. Schruer as to the proviso set forth in Mr. Hastings' letter and the record is devoid of any further correspondence or conferences between said parties relative thereto. The record does not show, and we can only assume that said positions were numbered at or about that time.

One of the Revenue Clerks positions was vacated in July, 1957, and on July 16, 1957, Bulletin No. 57 was posted, advertising the vacancy. On July 22, 1957, the position was awarded to Mr. D. G. Jesse. The Claimant, Senior to Mr. Jesse, also bid for the position, but his bid was not honored on the ground that he was the then incumbent of position No. 134, in the Revenue Clerks' Department.

Carrier did not question Claimant's qualifications but denied the claim on the ground that Claimant already held a position in the pooled forces of the Revenue Clerks.

Organization claims that Carrier violated Rule 23 of the Agreement when it refused to consider the bid of Claimant and award him the position. This rule reads as follows:

"RULE 23

Promotions, Assignments and Displacements

(a) Seniority rights of employees to vacancies or new positions, or to perform work covered by this Agreement, shall be governed by this Agreement.

(b) Employees covered by this Agreement shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail."

Organization also claims Rule 6 (Absorbing Overtime) and Rule 25 (Advertising Positions) were violated.

Organization contends that Claimant's bid for this position should have been granted: that he was senior to the accepted applicant and that he was qualified to do the work. His seniority and qualifications to do the work have not been questioned by Carrier.

Carrier, as previously set forth, denied the claim, by not considering his application "because at the time he already held a position of Revenue Clerk in the pooled forces". Throughout the very brief submission on the property, Carrier has consistently maintained the position that the seven Revenue Clerks positions established by Bulletin No. 25, constituted a pooled force.

Organization, on the property, in its response to the Carrier's denial of the claim and the reasons therefor, stated in part: "We, of course, deny as we have for some time, since the work in the office was rearranged, that

there is a pooled force. We are unable to see in what way the matter of a pooled force, if it was correct, has to do with denying an employe a promotion to position desired". Other than this statement, Organization presented nothing on the property to sustain these claims.

The question involved here, in our opinion, is whether or not, the Revenue Clerks positions established effective December 1, 1955, constituted a pooled force. There can be little question but what it did. All seven positions were established at the same time; the title or classification of each was the same, all had the same hours of assignment (even including the meal period), all had the same rate of pay and the same rest days, and the preponderant duties of all seven positions was to be "Maintaining records, Revenues and Per Diem". (Award 9680).

Even though specific numbers were given to each of the seven positions and individual work assigned to such positions, we do not believe, that the duties of each of the seven positions have been frozen to the extent that there is no permissible interchange of demurrage, revenue and per diem work in the seven positions. There is nothing in the Record to support any claim that the numbering of the positions constituted any agreement between the parties to so freeze any of the duties attached to such positions. Mr. Hastings' letter quoted herein wherein he stated he had no objection to numbering the positions when advertised, "provided it is understood that the work coming in under these positions is pooled in accordance with our understanding when the positions were agreed upon", clearly indicated the Carrier's position when it agreed to number the positions and there is nothing in the record to show any disagreement on the part of the Organization with reference thereto. The record is devoid of proof as to any actual practice of the parties relative to the handling of the seven positions, on the property, which would enable us to produce a result contrary to that indicated by Bulletin No. 25 and as indicated by the correspondence between the parties quoted herein.

In addition to the foregoing, the Carrier, in the record, further stated, "the seven positions of Revenue Clerk constitute a pooled force and the records established that the incumbents were moved from one section of the books to another." Chairman of Organization replied in part as follows:

"We, of course, deny as we have for some time, since the work in the office was rearranged, that there was a pooled force."

No evidence was adduced in the record and we can make no finding thereon.

There is nothing in this case wherein we could find a distinction in the type of work performed as there was in Award 5306. The record discloses nothing that would lead us to believe there was any difference in the work performed and even an examination of the ex parte submission of the Organization discloses no distinction between the various numbered positions: the duties were all similar and all consisted of maintaining records of Demurrage, Revenues and Per Diem; none were shown to be more desirous nor more onerous than the others.

We find Organization has failed to sustain the burden of proof on this claim and it must be denied. (Awards 9211, 9621)

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1962.