

Award No. 11135
Docket No. CL-11066

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Preston J. Moore, Referee

PARTIES TO DISPUTE:

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

THE CINCINNATI UNION TERMINAL COMPANY

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

(a) Carrier violated the Rules Agreement effective July 1, 1946, subsequently amended September 1, 1949, and February 1, 1956, when it failed to award Harold H. Schmidt, holding Master Terminal seniority date of August 26, 1942, the position of Ticket Clerk N-28 bulletined June 10, 1958, and awarded to A. H. Beinkemper on June 15, 1958, and

(b) Harold H. Schmidt now be reimbursed for wage loss sustained through failure of Carrier to make such award, until such time as the violation ceases.

EMPLOYEES' STATEMENT OF FACTS: On June 10, 1958, the following position was placed on the bulletin board in the office of Ticket Agent C. W. Woodward, The Cincinnati Union Terminal Company, Cincinnati, Ohio, as per Rule 12:

Ticket Clerk	— N 28
Location	— Ticket Office
Rate of Pay	— \$2.372
Hours of Work	— 8:00 A. M. to 4:45 P. M.
Rest Days	— Sat. and Sun.
Meal Period	— 12 Noon to 12:45 P. M.

In accordance with Rule 13, two employees submitted bids for the advertised position, namely A. H. Beinkemper in the Ticket Office holding Ticket Office point seniority date of October 9, 1924, and Harold H. Schmidt a Typist-Comptometer Operator holding Master Terminal seniority date of August 26, 1942. Mr. Beinkemper was a former New York Central employee who was

The above definitely proves that Claimant Schmidt did not suffer any monetary loss but actually gained by working the relief of filling vacation vacancies.

The Carrier requests this Division to deny the claim in its entirety.

All data presented herein has been presented or is known by the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between The Brotherhood of Railway and Steamship Clerks and The Cincinnati Union Terminal Company.

As of July 31, 1957 the New York Central closed its Ticket Office in Cincinnati and all ticket sales were transferred to the Terminal Ticket Office. They treated this as a consolidation under the terms of the Washington Job Agreement of May, 1936. The parties entered into the following Agreement.

"AGREEMENT

"Between

"NEW YORK CENTRAL RAILROAD COMPANY - SOUTHERN DISTRICT
THE CINCINNATI UNION TERMINAL COMPANY

and their employees represented by

"THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES.

"IT IS AGREED:

"1. (a) Effective August 1, 1957, the New York Central Railroad City Ticket Office at Cincinnati, Ohio will be closed.

(b) It is anticipated that a certain amount of ticket sales will flow to the Cincinnati Union Terminal Company and due to the anticipated increase in business, the following positions will be created in the Cincinnati Union Terminal Ticket Office:

"Make up Ticket Clerk	2.30	per hour	8:00 A. M. to 4:30 P. M.
Tkt. Clerk-Information	2.30	"	8:30 A. M. to 5:00 P. M.
Diagram Clerk	2.032	"	8:30 A. M. to 5:00 P. M.
Typist-Diagram Clerk	2.032	"	12:00 N to 8:30 P. M.
Typist Compt. Opr.	2.02	"	8:00 A. M. to 4:30 P. M.
Telephone Operator	1.876	"	8:30 A. M. to 4:30 P. M.
Telephone Operator	1.876	"	11:00 A. M. to 7:00 P. M.

"The above positions to be considered 'old jobs' or as if they were established before July 1, 1946.

"(c) The following New York Central Railroad employees affected by the closing of the City Ticket Office will be privileged to accept the above new positions according to their seniority and shall come within the scope and operation of the Agreement between The Cincinnati Union Terminal Company and their employees represented by the Brotherhood and will be merged with other employees on the Ticket Office Seniority roster of The Cincinnati Union Terminal Company, but not on the Master Terminal Seniority District Roster:

"J. J. Lang	9- 3-16
A. H. Beinkemper	10- 9-24
Nell Corcoran	11- 9-38
F. E. Mehlman	10- 1-42
Lorene Roche	11-19-42
W. V. DeMuzio	3- 4-43

"(d) The New York Central employees accepting the above positions shall carry their New York Central seniority with them and shall be placed on and continue to retain and accumulate seniority on the Ticket Office seniority roster in accordance with the Rules Agreement in effect in The Cincinnati Union Terminal Company.

- "2. The employees accepting the above positions will be considered Cincinnati Union Terminal employees and shall be entitled to and shall receive all the rights and benefits accorded The Cincinnati Union Terminal Company employees in the same manner as through their service with The New York Central Railroad Company had been with The Cincinnati Union Terminal Company.
- "3. In the application of the National Vacation Agreement of September 17, 1941 and supplements thereto to employees accepting employment with The Cincinnati Union Terminal Company the compensated service of such employees of the New York Central Railroad in 1956 shall be taken into account in determining qualifications for vacations in 1957 and the continuous service of such employees shall be considered as beginning on the same date from which it was calculated while they were employed by The New York Central Railroad.
- "4. The provisions of the job protection 'Agreement of May, 1936, Washington, D. C.' will apply to the New York Central Railroad Company employees listed in paragraph 1 (c) and the Cincinnati Union Terminal Company ticket office employees who are regularly assigned in the Ticket Office as of August 1, 1957.
- "5. The acceptance of employment by the New York Central Railroad employees with The Cincinnati Union Terminal Company under this Agreement does not impair any right of the employees against the New York Central Railroad under the Federal Employers' Liability Act, which right accrued prior to the effective date of this Agreement."

On June 10, 1958 a new position of Ticket Clerk was advertised. Two applications were received. The two applicants were A. H. Beinkemper and Harold Schmidt, the Claimant. Mr. Beinkemper was one of the former New York Central employees transferred under the 1957 Agreement. He had a seniority date from 1924 on the Ticket Office Roster but under the 1957 Agreement not on the Master Terminal Seniority Roster. Claimant held a seniority date of 1942 on the Master Seniority Roster but no seniority on the Ticket Office Seniority Roster.

We are of the opinion that the position should be filled under the provisions of Rule 8 (6).

"In filling new positions established on or subsequent to July 1, 1946, and any vacancies occurring on such positions, same shall be filled from employees on the Master Terminal Roster."

It is readily apparent that the parties to the 1957 Agreement contemplated this for they established 7 new positions at that time and stipulated that those 7 new positions would be treated as old positions for the purpose of filling the positions.

Part 2 of the claim falls for lack of evidence. It is apparent from the record that Claimant suffered no monetary loss.

For the foregoing reasons we find that the Agreement was violated.

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 Railroad 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

Part 1 sustained. Part 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1963.