

Award No. 12326
Docket No. CL-11992

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

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

TENNESSEE CENTRAL RAILWAY COMPANY

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

(1) That the Carrier violated the current Clerk's Agreement when it failed to call the oldest furloughed clerk in seniority order for extra work (Inventory) on the following dates: October 28, 29, 30, 31, 1958; November 3, 4, 5, 6, 7, 10, 1958. Total 10 days.

(2) Carrier should compensate the Claimant, Mrs. Marguerite P. May, for 10 days October 28 through November 10, 1958 as shown above.

EMPLOYEES' STATEMENT OF FACTS: Miss Marjorie Waddell and Mrs. Marguerite P. May were both laid off of positions which were excepted under our Agreement between the Tennessee Central Railway Company and its Clerical and Station Employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, bearing effective date of September 15, 1938.

This layoff was effective Monday, March 31, 1958 at the close of tour of duty. Copy of Notice to Mrs. May is herein reproduced as Exhibit No. 1. In keeping with the Agreement Mrs. May advised the Carrier of her correct address, Exhibit No. 2 and also advised Mr. J. L. Fossick Jr., Mechanical Assistant to the President, of her desire to be called for extra work. Exhibit No. 3. Mrs. Marguerite May has seniority date of Sept. 22, 1947 and Miss Marjorie Waddell has seniority date of October 6, 1948.

Subsequent amendments and Agreements have been made to the original agreement of September, 1938, rules of which will be hereinafter reproduced and made a part of this claim.

On October 28, 29, 30, 31, 1958 and November 3, 4, 5, 6, 7, 10, 1958 inventory was taken at the Stores Department, Nashville, Tennessee and a younger furloughed clerk, Miss Waddell was called to perform this service. On December 26, 1958, Mrs. Marguerite P. May made a formal claim under our agreement. See Exhibit No. 4. This claim was declined by letter on January 5, 1959 by the Mechanical Assistant to the President, Mr. J. L. Fossick. Ex-

contending that because of some redistribution of work that the said positions could not (and presumably could never again) be classed as "excepted" or personal office force, but Carrier fails to find any sound reason, contractually or otherwise, for such a contention.

To the contrary, the rules of the agreement and practices thereunder are convincing that even though a personal office position were abolished, the only bar to its reestablishment on either a temporary or permanent basis would be its removal from the listing in Rule 2 of the agreement through the medium of negotiation; and needless to say, such removal of either of the positions here in controversy has not taken place.

Furthermore, inasmuch as Miss Waddell was recalled to perform the same kind and character of work that she had previously performed on her personal office position of stenographer in the Purchases and Stores Department, and claimant Mrs. May was considered as not having sufficient qualification for the proper performance of the required work of the Purchases and Stores Department, Carrier submits that even to surmise that neither of them were personal office employees, as Employees seemingly do, the fact remains that the senior capable employee available and not working was the one that was used, which under any circumstances would constitute full compliance with the requirement of Article 8 (b) of the agreement that "* * * short vacancies * * * will be filled by the senior capable employee available and not working, * * *."

Carrier submits that it properly recalled Miss Waddell for the work in question, but that in any event there was no violation of the agreement, and claim must, therefore, be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: There is no dispute about the following facts: Claimant, Mrs. May, was laid off of her excepted position as Stenographer in the Mechanical Department "until further notice" effective March 31, 1958. Mrs. May has a seniority date of September 22, 1947. Another employee, Miss Waddell, was laid off of her excepted position of Stenographer in the Purchases and Stores Department "until further notice" effective March 31, 1958. Marjorie Waddell has a seniority date of October 6, 1948. Therefore Claimant has greater seniority of approximately one year. During the period covered by the instant claim, Miss Waddell was temporarily recalled to perform seasonal work for which she received ten days' pay. Claimant requested that she be paid for ten days of work since she has greater seniority than Miss Waddell.

Upon review of the entire record the Board finds that the work involved was extra work, and the performance of same could not properly be considered as the filling of an excepted position. Having found that the work involved was extra work, the senior furloughed qualified employee should have been recalled. In its submission to the Board the Carrier raises some question as to the qualifications of the Claimant to perform the work. However, it is noted that in the handling of the dispute on the property, no such question was raised, and it is well established that new issues may not be raised for the first time before the Board. The claim will be sustained.

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

That the Carrier violated the Agreement.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of March 1964.