

Award No. 12450
Docket No. CL-11317

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

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

PACIFIC ELECTRIC RAILWAY COMPANY

STATEMENT OF CLAIM: It is the claim of the System Committee that:

(a) Carrier violated the Clerks' Agreement when it made an improper withdrawal of an assignment on June 17, 1958, by allowing Employee William Mellendorf to relinquish the assignment and re-assigning the temporarily vacant position to A. C. Meakins, thereby denying certain extra and unassigned employees the right to work on such days. Further, it violated Article V, August 21, 1954 Agreement by failing to give reasons for denying claim.

(b) Carrier shall now be required to pay a day's pay at the pro rata rate for each day of the violation to the claimants named below at the rate of the positions that they would have otherwise worked in the absence of the violation.

Claim Date	Job No.	Job Title	Rate of Pay	Claimant
6-17	103	Car & Bill Clerk	\$18.56	A. Michel
6-18	103	Car & Bill Clerk	18.56	W. Mellendorf
6-19		Regular Day Off		
6-20		Regular Day Off		
6-21	21	Car Clerk	18.36	A. Michel
6-22	12	Chief Clerk	19.96	G. L. Wallis
6-23	12	Chief Clerk	19.96	J. C. Carter
6-24	103	Car & Bill Clerk	18.56	A. Michel
6-25	103	Car & Bill Clerk	18.56	A. Litvak
6-26		Regular Day Off		

Claim Date	Job No.	Job Title	Rate of Pay	Claimant
6-27		Regular Day Off		
6-28	21	Car Clerk	18.36	W. Mellendorf
6-29	12	Chief Clerk	19.96	J. R. Fraser
6-30	12	Chief Clerk	19.96	J. R. Fraser
7- 1	103	Car & Bill Clerk	18.56	J. F. Everly
7- 2	103	Car & Bill Clerk	18.56	A. Michel

EMPLOYEES' STATEMENT OF FACTS: By AGM Notice No. 279 dated June 5, 1958, (Employees' Exhibit No. 1), Carrier advertised for bids Job No. 18, Relief Clerk, for temporary occupancy by employees on Operating Department Clerks' Roster No. 3.

Employees on Roster 3 submitting bids for this position were:

Wm. Mellendorf — seniority date 8-10-1950
A. C. Meakins — seniority date 7- 9-1951

By AGM Notice dated June 13, 1958 (Employees' Exhibit No. 2) Carrier awarded Job 18 to employee Wm. Mellendorf.

On AGM Notice No. 286 dated June 17, 1958 (Employees' Exhibit No. 3) Carrier entered a "Note" stating:

"Temporary award of Position No. 18, Relief Clerk Various, advertised in Notice No. AGM-279, under date of June 5, 1958, should be A. C. Meakins, Seniority July 9, 1951."

Copies of correspondence exchanged with the Carrier, identified as Employees' Exhibits 4 through 11, in chronological order, are attached and incorporated herein.

This dispute has been appealed to and declined by the Chief Operating Officer of the Carrier designated to consider such matters as comprehended by the Railway Labor Act.

POSITION OF EMPLOYEES: That Carrier violated rules of the parties agreement effective August 1, 1955, copy of which has heretofore been filed with the Adjustment Board and which by this reference thereto is made a part hereof.

Rule 29 of the effective Agreement provides in part:

"(f) Assignments will be made within four (4) days after the closing day of receiving bids, and successful applicant will be placed on the job as soon as practicable.

(h) The name and seniority date of the successful applicant will be posted for a period of four (4) days where the position was bulletined."

that the initial claim was declined by the Assistant General Manager because it was not supported by agreement provisions. This is certainly reason for disallowance.

(c) The inclusion in the claim that Carrier violated any agreement by failing to give reasons for denying the claim is not timely. No such question has ever been raised on the property by the Employees and cannot at this late date be brought into focus in the dispute under the provisions of Section 3 First (i) of the Railway Labor Act. In other words, this matter has not been handled in the usual manner up to and including the chief operating officer of the Carrier as required by the Act. This is best illustrated by the fact that if the allegations of the Employees are correct, then the Employees should have requested that the claim be allowed as presented. Rule 22 of the collective agreement provides, in part:

'If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.'

(Exhibits not reproduced.)

OPINION OF BOARD: The dispute involves the filling of a vacancy advertised as Job No. 18-T, Relief Clerk, effective June 17, 1958. The bulletin was issued June 5th, with bids closing June 12th at 4:30. On June 13th a notice was issued showing William Mellendorf as the successful bidder, with A. C. Meakins next in line, but of junior seniority to Mellendorf. Later, on June 13th, the same day, it was discovered that William Mellendorf was not qualified to be the successful bidder, and after consultation and concurrence of Mellendorf and J. A. Lewis, representing the Brotherhood of Railway Clerks, Mellendorf's name was lined out and the name of A. C. Meakins interlined as the successful bidder. On June 17th, the Carrier issued a bulletin, which contained the footnote reading:

"NOTE: Temporary award of Position No. 18, Relief Clerk Various, advertised in Notice No. AGM-279, under date of June 5, 1958, should be to A. C. Meakins, Seniority July 9, 1951."

The employees filed claim on July 29, 1958, by letter to the Assistant General Manager basing the claim on violation of Rules 25, 29, 30, 31 and 34, thereafter, and after conference, the Carrier denied the claim stating "Claims are not supported by Agreement provisions, and are respectfully denied."

It is the position of the employees, that having assigned Job 18-T, to Mellendorf, that it could not be reassigned to another employee without re-advertisement and bidding, even though the successful applicant withdrew from the position (Rule 29), and that Rule 34 prevents an employee from relinquishing an assignment without the approval of the General Chairman, which was not here obtained.

Mellendorf, not being qualified for the position, could not be the successful bidder. The notice posted on June 13th, indicating he was the successful bidder did not, ipso facto, qualify him, and had he been allowed to take the position, a claim could have been filed by the proper owner of the position. Rule 29(f) provided that assignments shall be made within four days after the closing day of receiving bids. Here the assignment was made on June 13th by the clerk as shown by Exhibit B-1 which was filed on June 13th, and reads:

"18 T — Relief Clerk, A. C. Meakins — 7/9/51.

Various) Wm. Mellendorf — 8/10/50. (lined out.)

(Mellendorf withdraws.)
(OK'd by J. A. Lewis of BRC.)"

Rule 29 (h) reads:

"(h) The name and seniority date of the successful applicant will be posted for a period of four (4) days where the position was bulletined."

There is no requirement here that the announcement be made within four days as in 29(f). It is sufficient that the posting be within a reasonable time, and a posting five days after the closing day for bids, would seem reasonable when it is noted that the two senior bidders and the Organization were independently notified on the day following the close of bids.

A further argument is made that while the Carrier notified the Claimants that the claim was denied, as not being supported by the agreement, that this was not a sufficient reason for denial as required by the time limits rule, which reads in part:

"... Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

Here the Carrier did all that was possible in making an answer. The claim had no basis in the agreement, and no further explanation was possible.

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 23rd day of April 1964.