

Award No. 12506
Docket No. CL-12193

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4850) that:

(a) The Carrier violated the Agreement when, effective August 3, 1959, new employees were used to fill a temporary vacancy on the Claim Clerk position in the Local Freight Office, Greensboro, North Carolina, position temporarily vacated by Mr. W. T. Porter.

(b) Claimant, Mr. R. D. Smith, furloughed Clerk, Greensboro, North Carolina, should have been assigned to the Claim Clerk position, and

(c) Claimant Smith shall be compensated, commencing August 3, 1959, at the proper pro rata rate of pay for each day that an employee with less seniority was used on the temporary vacancy of claim clerk.

EMPLOYEES' STATEMENT OF FACTS:

1. R. D. Smith, furloughed clerk, has clerical seniority on the Danville Division, dated from November 1, 1945.

2. Claimant Smith's letter of July 18, 1959, to Mr. R. F. Borum, Agent, Greensboro, North Carolina, asked that his name be placed on the list for all extra work available. (Employees' Exhibit A.)

3. Due to his illness, Mr. W. T. Porter's claim clerk position became vacant effective August 3, 1959.

4. Individuals without clerical service or seniority were hired and placed on the claim clerk position by Agent Borum. According to Mr. Borum, the first of two such employees worked only one day. The other such employee, who had never worked for the railroad in any capacity, worked the temporary

Rule 8 (a) provides that preference for extra clerical work will be given to the "available senior qualified furloughed clerical employee." Then, under paragraph (a) (2), carrier has the right to rearrange the existing force when temporary vacancies occur, so long as the provisions of Rule 46 (a) are observed in such rearrangement.

Rule 46 (a) provides that employees "temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions."

In the case now before the Board, there was no **qualified** furloughed clerk available to fill the temporary vacancy in the claim clerk position. Therefore, since it was necessary that the position be filled, the officer in charge had no alternative but to rearrange the Claim Department force, and Mr. Parrish was designated to fill the vacancy, in accordance with Rules 8 (a) (2) and 17. During the time that Mr. Parrish filled the vacancy, he was compensated at the higher rate of pay, as provided in Rule 46 (a). There is not a single rule or provision in the agreement that requires the carrier to use a furloughed clerk on a vacancy he is not qualified to fill.

The provisions of Rules 8 (a) and 17 are clearly applicable in the case of temporary vacancies which are filled, without bulletining and without regard to seniority, at the discretion of the officer in charge. Carrier also respectfully points out that, even where vacancies are bulletined and filled under Rule 16 (as was the case in 1952 and 1959, when claimant bid on the assistant claim clerk position), seniority governs only when "merit, capacity and qualifications" are sufficient. In this case, Mr. Smith definitely lacked sufficient merit, capacity and qualifications to fill the temporary vacancy, while Mr. Parrish, who was already working in the Claim Department, had demonstrated that he could satisfactorily perform the duties of that department.

The evidence of record does not support petitioner's claim that the agreement was violated or that claimant should have been used on the temporary vacancy in question. To the contrary, carrier has shown that claimant was definitely not qualified to fill such position. For the reasons set forth herein, the claim should be denied in its entirety, and carrier respectfully requests that the Board so decide.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant, a furloughed clerk, had a clerical seniority dated from November 1, 1945, and requested by correspondence that his name be placed on the extra list for available work, as provided in Rule 8(a)(7).

The record indicates that in August, 1959, there were three regular assignments in the claim department at Greensboro, N.C., freight agency—the head claim clerk at rate of \$19.08 per day, and the other two at \$17.85. On August 3, a temporary vacancy occurred in the \$19.08 position. Subsequently, the regular occupant of one of the \$17.85 positions was temporarily assigned, resulting in a temporary vacancy in his lower-rated assignment. An employee without clerical seniority, but with seniority and status as extra telegrapher, was used as extra clerk and worked the position only one day. Agent Borum then hired a new employee, with no previous clerical service, as an extra clerk. The newly hired extra clerk worked the temporary vacancy until it was bulletined and assigned effective September 25 to the senior qualified bidder.

Claimant Smith was the senior furloughed clerk who had filed written application for extra work at Greensboro freight agency. He was available, but was denied the extra work in the claim department on the contention that he was unqualified. However, during the period August 3 through September 24, Claimant was used to perform available extra work as warehouse and transfer clerk at the freight station.

The Organization contends that Carrier violated the agreement when the extra telegrapher and the newly hired and inexperienced extra clerk were used in preference to Claimant to fill the temporary vacancy. It is contended that Claimant had previously worked about one month in the claim department. As a Group 1 clerical employe, he had worked as a Ticket Clerk, Auditor's Clerk, Claim Clerk, Transfer and Relief Clerk, Warehouse Clerk, OS&D Clerk, General Clerk and Stowman Foreman. In addition, this experience was supported by 14 years' employment with the Carrier.

The Carrier contended that the Claimant lacked the ability to perform the work, and in reply to the Claimant's Organization, stated:

"... It is true, two younger men have been used to assist on claim desk. One, however, was an extra agent telegrapher who worked only one day and left of his own accord. In permitting the other younger man to assume duties afterwards, consideration was given his background, which would enable him to learn quickly. This includes high school commercial course plus two years at N. C. State College, specializing in business administration. It is my duty as agent to assign work to those I consider qualified or capable of doing so with a minimum of assistance in a reasonable length of time..."

The pertinent Rules involved in this dispute are as follows:

"RULE 8. EXTRA CLERICAL WORK.

(a) Except as provided in Rules 7 and 17, preference for extra clerical work on the respective seniority districts will be given to the available senior qualified furloughed clerical employe on such districts, . . .

* * * * *

(7) Subject to the provisions of paragraphs (4), (8) and (9) of this section (a), furloughed employes desiring to avail themselves of this extra work will register with the officer in charge in each office at the particular point at which they desire extra work, and failing so to do, will be barred from filing claims for pay on account of junior employes being used."

"RULE 17. TEMPORARY VACANCIES.

* * * * *

NOTE No. 1: When such temporary vacancies are filled, either for the entire period or portion thereof, as provided in Rule 8, preference for such work shall be given to employes holding seniority in group or class in which vacancy occurs, . . ."

It is not disputed that Claimant was the senior furloughed clerk who had filed application for extra work with the officer in charge as required by Rule 8(a)(7). Was he qualified? That fact was never determined, as the officer in charge ignored Claimant's application and afforded him no opportunity whatever to demonstrate his ability on the job. It is unbelievable that Claimant, with 14 years of clerical service and freight agency experience, was not more qualified to perform the extra work than the new hire with no prior clerical service. We therefore hold that Claimant should have been given preference for the extra work over the new hire and that Carrier violated Rule 8 in disregarding Claimant's application. He is entitled to be made whole for the breach. Claimant is due the amount of compensation made by the extra telegrapher and the new hire on the temporary vacancy in the claim department during the period August 3 through September 24, 1959, less the amount he earned during the same period.

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 Agreement was violated.

AWARD

Claim sustained to extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1964.