

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
CHICAGO AND ILLINOIS MIDLAND RAILWAY COMPANY**

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

1. Carrier violated and continues to violate the current Clerks' Agreement between the parties effective February 1, 1938, revised and reprinted April 1, 1953, beginning on July 16, 1958, when it arbitrarily established the position of Chief Clerk, in the consolidated offices of Springfield Station and Shops Yard Office, Springfield, Illinois, as one excepted from certain rules and subject to Rule 1½(b), and further, failed to assign Mr. C. T. Maddox to the position.
2. That the Carrier shall now be required to list the position subject to all rules of the current Clerks' Agreement; and
3. That the Carrier shall now be required to assign Mr. C. T. Maddox to the position of Chief Clerk; and
4. That the Carrier shall now be required to compensate claimant C. T. Maddox for all wage loss sustained on each date such violation occurs:

NOTE: Reparations due claimant be determined by joint check of Carrier's payrolls and such other records as deemed necessary.

EMPLOYEES' STATEMENT OF FACTS: On July 1, 1958, and at least as early as January, 1942, there were two separate and distinct offices designated as Yard Office and Station located at the Carrier's yards in Springfield, Illinois, commonly referred to as Shops. These offices were located at opposite corners of the area comprising Shops, the Yard Office in the Southeastern corner while the Station was in the Northwestern corner. All positions and employees referred to herein being in Seniority District No. 2 covered by Roster No. 2. The above mentioned offices remained intact until July 16, 1958, when all positions in the two offices were, according to bulletin, issued by Superintendent Transportation & Equipment W. G. Harvey on July 9, 1958, abolished. The Bulletin reads as follows:

5. IT IS APPARENT THE STATEMENT OF CLAIM CONTAINED IN THE WRITTEN NOTICE OF INTENTION TO FILE AN EX PARTE SUBMISSION IS AN AMENDED CLAIM.

(a) The new position of Chief Clerk was initially published on July 9, 1958, and the due processes of the agreement followed in considering all applicants for it, including claimant Maddox. No one, including Maddox, timely contested or question that such position was not rightfully created or advertised. The local and general chairmen passively concurred in the re-arrangement of work and in the publication of the new jobs and assignments—that is, until September 10, 1958 (63 days after such new assignments were published), when the General Chairman with reference to attempting to have Maddox assigned to the new Rule 1½(b) position makes only the inference, among others, that the new position assigned to Hord is the same position previously held by Maddox, and, therefore, it should have been bulletined as fully covered and assigned to Maddox. It is significantly evident that General Chairman Campbell did not desire to make any issue with regard to the July 9, 1958, publications until after the time limits in which to do so expired. Whatever contention the organization might now have with respect to the initial publication of the new position is not only without merit, but was untimely (made on the 63rd day) and barred by their own actions, in accordance with Appendix No. 4, Article V(a), reading in pertinent part as follows:

(a) All claims or grievances must be presented in writing by or on behalf of the employe involved to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. . . .

CONCLUSION

Had Maddox, rather than Hord, been appointed to the new position, the claim here involved would obviously not be before your Board. None of the organization's contentions are supported by the rules agreement, as Maddox' old position was abolished and there are no provisions in Rule 22 granting a disappointed employe super-promotion and assignments rights to a new position. The baseless claim for an alleged Rule 22 violation, together with a defective contention for Rule 9, certainly forecloses any consideration for a fictitious wage loss on an unproven insinuation that a new \$518.75 per month Rule 1½(b) position of Chief Clerk in the combined Station-Yard Office force was the same as an abolished \$19.89 per day Chief Clerk-Cashier assignment at an extinct freight and passenger station.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to July 16, 1958, the Carrier maintained separate facilities and separate work forces at its Freight Station and Yard Office, located at Springfield, Illinois. Claimant C. T. Maddox was the incumbent of the position of Chief Clerk and Cashier. After the above date, the Carrier re-arranged its Clerk work force at this location and the Carrier explains that the reason for making the said changes was due to a decline in work requirements. In effecting the changes, the Carrier abolished all positions of the Station and Yard forces. The Bulletin covering this action shows that seventeen (17) positions were abolished, including the position of Chief Clerk and Cashier which, previous to the change, had been occupied

by Claimant Maddox. Concurrent with the above, the Carrier re-established and bulletined twelve (12) positions. Pursuant to the reorganization, the Carrier alleges that it established a new position as Chief Clerk, station yard office, in compliance with Rule 1½(b) of the Agreement.

There were eight applicants for this position, including Claimant. The position in issue was assigned to a Mr. Hord, who admittedly had greater seniority than Maddox, but had previously been the incumbent of another position located thirty (30) miles away, and who, it appears, was not affected on his prior position by the changes described above.

Petitioner claims, inter alia, that the changes made were set in motion by the Carrier with the motive of awarding the position to Hord at the expense of Maddox arbitrarily, in violation of certain rules of the Agreement. The Carrier resists this contention of the Organization, and counters with a denial of any bad faith motivation on its part and states that the changes made were due to a decline in work requirements.

While the evidence in the case is in hopeless conflict on many points, certain salient facts emerge as follows:

1. The record shows (Employee's Exhibit D, letter from the Carrier's Superintendent of Transportation and Equipment, Mr. W. G. Harvey) that the Carrier's own Superintendent set forth the "CARRIER'S FACTS:", quote:

"On July 16, 1958, the Shops Yard Office forces and Shops Freight office forces were rearranged and consolidated. * * *" (Emphasis ours.)

2. Petitioner places its major reliance on the application of Rule 22 in the current Agreement which is captioned "Consolidations and Division" and provides as follows:

"When, for any reason, offices or departments are consolidated, or divided, employees affected shall have prior rights to corresponding positions in the consolidated or divided office or department. After such rights have been exercised, these rules will govern." (Emphasis ours.)

Applying those items which appear to have evidentiary foundation as facts in the record to the requirements of Rule 22, we find that the instant case falls squarely within the said Rule, for the following reasons:

- A. We agree that the Carrier's Superintendent correctly described the effect of the Carrier's actions in the "Carrier's Facts" when he said:

"On July 16, 1958, the Shops Yard Office forces and Shops Freight office forces were rearranged and consolidated."

- B. Rule 22 is clear and unambiguous.

- C. The Carrier's actions resulted in a "consolidation" within the meaning of the Rule.

- D. The Claimant was directly affected by this consolidation and Carrier's insistence that Rule 22 is not involved is not supported by either the record or the plain meaning of the said Rule. Carrier's action in denying the instant claim is a detriment to Claimant which Rule 22 seems designed to protect him from suffering.
- E. While the Carrier contends that the intent of the Rule was to apply to horizontal moves involving different seniority districts, this would seem to be a tortured construction of the language of the Rule, which says nothing to this effect.
- F. It would seem that the record does not support the Carrier's contention that the position Claimant requested is such a "newly created position" as to differentiate it from a "corresponding position."
- G. Rule 22 states unequivocally that when offices are consolidated the employees affected **shall** have prior rights to corresponding positions in the consolidated office. The word "shall" is mandatory and not permissive; Claimant had an absolute contract right to the assignment of Chief Clerk, station yard office, which right was superior to that of Mr. Hord to whom the Carrier gave the position in question.

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 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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1964.