

Award No. 12807
Docket No. CL-12284

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Pere Marquette District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4893) that:

(a) Carrier violated and continues to violate the rules of the current agreement between the above named parties by failing and refusing to assign Mr. Ralph Bayne, Caboose Supplyman-Janitor, to position of Clerk-Typist, in the office of District Car Foreman, Seniority District No. 55, Saginaw, Michigan.

(b) Mr. Ralph Bayne be assigned to position of Clerk-Typist, and that he be paid the difference between the \$18.51 and \$17.60 from and after August 19, 1959, plus such wage increases as might be effective.

EMPLOYEES' STATEMENT OF FACTS: On June 22, 1959, Mr. C. J. Tolloff, District Car Foreman, issued Bulletin No. 2, advertising a temporary vacancy of position Clerk-Typist, rate \$17.47 (excluding cost-of-living), in District No. 55 (Employees' Exhibit No. 1). This vacancy was awarded to Mary Lou Stevens, who was a Clerk-Typist in this office (Employees' Exhibit No. 2).

Miss Stevens vacating her position, it was then advertised in accordance with the rules of the agreement (Employees' Exhibit No. 3), and Claimant Bayne submitted his bid for this position with the District Car Foreman, in accordance with his rights under the agreement (Employees' Exhibit No. 4). This position carried a rate of \$16.55, excluding cost-of-living adjustment.

Mr. Bayne holds a seniority date in Group 1 as of June 13, 1956, and a Group 2 seniority date as of February 13, 1957, in District No. 38. However, the position was awarded to Arlene Weinecke, who has only an employee status (Employees' Exhibit No. 5).

Carrier submits that having agreed with this application initially in the instant case the organization may not now be heard to complain of it.

It is noted the Statement of Claim appealed to the final appeal officer on the property, and the Statement of Claim before your Board, do not name the bulletin and date on which Carrier is alleged to have violated the agreement in this case. Should the position of the Employees be that the violation in this case began on August 13, 1959, this because of the mutual understanding reached in connection with the previous assignment, then Carrier submits this claim must fall by reason of the Employees' own argument, for on August 13, 1959, Mrs. Weinecke did have seniority in the district and claimant did not.

Any inference that representatives of the Organization may have been misled in the instance of the assignment under bulletin 3-A of July 13, 1959, in this case is refuted by the 1959 seniority list posted in the district in January, 1959, after having been signed by the local chairman involved. This list shows the names and seniority dates of two employees in the district who held positions alleged to have been by-passed by Mrs. Weinecke. (Carrier's Exhibit No. 2.) This argument is further acknowledged to be immaterial by the General Chairman in his letter of January 19, 1960, wherein he states:

"Mr. Allen is correct when he says that he sees nothing in the agreement which requires that an employee who has acquired an 'employee status' must bid on every bulletined position."

In view of the plain language of the pertinent rule and the action of the Organization in this case, Carrier submits the claim here before your Board should be declined.

(Exhibits not reproduced.)

OPINION OF BOARD: The basic facts are not in dispute. Mrs. Arlene Weinecke was last employed by the Carrier on July 25, 1955, as an extra clerk in the Mechanical Department offices at Saginaw, Michigan. This office is in Seniority District No. 55. She established no seniority because she was never assigned by bulletin to an advertised position.

On July 1, 1959, Carrier issued Bulletin No. 3 in District 55 advertising a temporary vacancy of more than thirty days on a Clerk-Typist position. Mrs. Weinecke applied for this position. Claimant, who held seniority in District No. 3, also applied for that temporary position. Carrier assigned Mrs. Weinecke by Bulletin No. 3-A, dated July 9, 1959.

On August 13, 1959, Carrier advertised a permanent position of Clerk-Typist in District No. 55, by Bulletin No. 4. Both Mrs. Weinecke and Claimant bid for this position. Mrs. Weinecke was assigned by Bulletin No. 4-A, dated August 19, 1959.

Petitioner contends that Claimant and not Mrs. Weinecke should have been assigned because Claimant had established seniority and Mrs. Weinecke had not. Carrier thus violated Rules 7 and 3(f) which provide for promotion and bidding on a seniority basis.

Rule 3(f) reads as follows:

"(f) Employees filing applications for positions bulletined in other groups or districts will, if they possess sufficient fitness and

ability, be given preference on a seniority basis, subject to Rule 7, and in the following sequence:

1. Employees bidding from one group to another in the same district.
2. Employees bidding from one district to another over employees not covered by this agreement and non-employees."

Claimant held seniority in District No. 38 and he applied for a bulletined position in District 55. Mrs. Weinecke was an employee of the Carrier, although she had not established seniority until July 9, 1959, when she was assigned to the temporary vacancy by Bulletin No. 3-A. Under Rule 3(f) Claimant had preference over employees not covered by the Clerks' Agreement such as employees of the Carrier working in other crafts and "non-employees." The latter can refer only to those who are newly hired specifically to fill the bulletined position. They are not employees of the Carrier at the time the position was advertised.

But Mrs. Weinecke was an employee for almost four years before she was assigned to the temporary position by Bulletin No. 3-A. How else than by bidding for a temporary or permanent vacancy could she ever acquire seniority? The clear and unmistakable meaning of Rule 3(f) is to give employees who apply for bulletined jobs in their own seniority district preference over employee applicants with established seniority in another district. To hold otherwise would be inconsistent with the generic meaning of "non-employees" as used in Rule 3(f).

This is not contrary to the provisions of Rule 7, which says that promotions, assignments and displacements shall be based on seniority. Rule 3(f) modifies or clarifies the intent of Rule 7 by setting out the conditions under which an employee applying for a position in another seniority district is given preference.

Carrier properly assigned Mrs. Weinecke to the temporary vacancy by Bulletin No. 3-A. When the permanent position was advertised in Bulletin No. 4, she had seniority in District No. 55. Claimant had no seniority in that district; therefore, Mrs. Weinecke was properly assigned to the permanent position by Bulletin No. 4-A.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1964.