

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4922) that:

1. The Carrier violated the provisions of the Clerks' Agreement, specifically, Rules 2-A-1 (a) and 2-A-2 (b) when it failed and refused to bulletin and award a regular established clerical position Symbol B-8 effective January 6, 1960.

2. The Carrier shall pay Clerk Anna S. Day the difference between the rate of her position, \$423.17 per month, and the rate of position Symbol B-8, \$461.80 per month, starting on January 20, 1960, the effective date the position should have been awarded and each day thereafter until the violation is corrected.

3. After the violations are corrected by proper bulletin and award, the affected clerks who would have been advanced if the violations had never occurred shall be compensated for all losses starting on January 20, 1960 and each day thereafter until the violations are corrected. Wage losses of all affected employees shall be determined by a joint check of company records.

EMPLOYES' STATEMENT OF FACTS: There is in effect a Rules Agreement effective July 1, 1945 and the National Agreement signed at Chicago, Illinois, August 21, 1954, covering clerical, other office, station and storehouse employees, between this Carrier and this Brotherhood. The Rules Agreement will be considered a part of this statement of facts. Various Rules and Memorandums therefore shall be referred to from time to time without quoting in full.

This dispute involves the question of whether or not this Carrier complied with the meaning and intent of the Rules Agreement when it failed and refused to promptly bulletin and award a regular clerical position (Symbol B-8) which became vacant effective January 6, 1960, and instead assigned this

quently, the Brotherhood has itself failed to comply with the provisions of Article V(a) of the August 21, 1954 Agreement, which provides that the Brotherhood must file claim in behalf of "named" claimants.

In view of the foregoing, the claim in its entirety should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This docket was referred to the National Disputes Committee established by Memorandum Agreement dated May 31, 1963, to decide disputes involving interpretations on applications of certain stated provisions of specified National Non-Operating Employees Agreements. On April 22, 1965, that Committee rendered the following Findings and Decision (NDC Decision 24):

"FINDINGS (Art. V): Paragraph 1(a) of Article V of the August 21, 1954 Agreement provides that —

'All claims or grievances must be presented in writing
by or on behalf of the employee involved * * *'

The Carrier contends before the Third Division that paragraph 3 of the claim, covering 'the affected clerks who would have been advanced if the violations had never occurred', did not comply with the requirement of Article V that claimants be named. The record does not show that such contention was made during the handling on the property.

The National Disputes Committee rules that inasmuch as the carrier did not raise on the property contention that the claim did not meet the requirements of Article V by not naming the claimants, it may not raise such contention before the Third Division.

DECISION: The carrier waived the contention that the claim did not meet the requirements of Article V by its failure to raise that contention on the property.

This decision disposes of the issues under Article V of the August 21, 1954 Agreement. The docket is returned to the Third Division, NRAB, for disposition in accordance with Paragraph 8 of the Memorandum Agreement of May 31, 1963."

On January 6, 1960, clerical position Symbol No. B-8 became vacant due to the resignation of Lillian T. Kunkel, who after 15 years as Accident Clerk accepted another position. An extra employee occupied this vacancy for approximately nine months. On September 21, 1960, Carrier bulletined the position. The former incumbent, Clerk Kunkel, and other applicants, including the named Claimant, Anna S. Day, bid for the position. These bidders then withdrew, leaving Clerk Kunkel as the only applicant, and she was awarded the position.

The Brotherhood makes claim that Carrier violated the Agreement when it failed to advertise the position after it was vacated, and requests compensation for Clerk Anna S. Day from January 20, the date the position should have been awarded, until October 4, when Miss Kunkel was assigned to position Symbol No. B-8. It also makes claim for compensation in behalf of clerks who may have secured advancements if the position had been bulle-

tined on January 6, 1960. The Brotherhood relies on Rules 2-A-1 (a) and 2-A-2 (b) to support its position that Carrier had an obligation to bulletin the position promptly in view of the permanent vacancy.

In its denial Carrier points out that it recognized the desirability of transferring some of the work involved in the Accident Clerk's position because of its highly technical nature closely related to the functions of the Law Department and the Bureau of Claims. It states that in accordance with the Rules and the Working Conditions Agreement it made attempts to negotiate concerning the transfer of this work, but that the General Chairman refused to do so. Accordingly, it urges that it was within its rights in withholding the bulletining of the position until all possible efforts had been made to reach an agreement with the General Chairman. Finally, convinced that the General Chairman would not negotiate, Carrier advertised the position. Carrier further urges that Mrs. Day had no rightful claim, since she was not the senior employee bidding for the position, and since there is no assurance that she would have been awarded the position on January 6. It also argues that the claim of the other employees is too speculative and is lacking in a basis for determining damages.

Rule 2-A-1 (a) clearly sets forth the responsibility of Carrier promptly to bulletin a vacancy known to be of more than 30 days' duration. In explaining its failure to advertise the position until nine months after the resignation of Miss Kunkel, Carrier interprets Exception 4 of the Rules and the Working Conditions Agreement to require the General Chairman to agree to its proposed transfer. The section of Exception 4 upon which Carrier relies reads as follows:

* * * * *

The transfer of work or a position now subject to all the rules of the Clerks' Agreement to a position exempted from certain rules of the Agreement will not be made except when such action is agreed to by the Manager of Personnel and the General Chairman."

Unwillingness to enter into a new Agreement which transfers work from a position which is subject to all of the rules of the Clerks' Agreement to a position exempted from certain rules of the Agreement is not evidence of failure to adhere to the basic principles of collective bargaining. The rule does not require that the Manager of Personnel and the General Chairman must give approval to a request for transfer of work; it stipulates that the transfer be made if these officers agree. Our position is in accord with Award No. 8526. We, therefore, hold that Carrier violated Rule 2-A-1 (a) when it failed to bulletin the position promptly after it was vacated on January 6, 1960.

Request for compensation for unnamed claimants in paragraph 3 of the Statement of Claim is denied, because there is no certainty of the effects on the unnamed claimants if Carrier had properly advertised the position of Accident Clerk. Too much speculation and conjecture is involved in determining wage losses. Miss Kunkel, whom the Brotherhood identifies in its submission as an affected clerk for whom it requests compensation among the unnamed group of claimants in paragraph 3 is not entitled to reimbursement for loss of wages because of her voluntary resignation of position Symbol No. B-8 and her acceptance of another position. On the other hand, in view of the violation of the Agreement, the claim for Clerk Anna S. Day is allowed. She is entitled to the difference between the rate of her position,

\$423.17 per month and the rate of position Symbol No. B-8, \$461.80 per month, starting on January 20, 1960 to October 4, 1960.

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

The Agreement of the parties was violated.

AWARD

Claims 1 and 2 are sustained. Claim 3 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1965.