

Award No. 14206

Docket No. CL-15341

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5677) that:

(a) The Southern Pacific Company violated the current Clerks' Agreement at Los Angeles, California, when on December 4, 1961, it arbitrarily assigned junior employee Sarah Konvisser to a short vacancy on Assistant Service Clerk Position No. 24 thereby depriving senior employee John A. Diaz of the opportunity to perform service thereon; and,

(b) The Southern Pacific Company shall now be required to allow employee John A. Diaz compensation equal to all wages earned by employee Konvisser while assigned to Position No. 24 December 4, 5, 6, 7, 8, 11, 12, 13, 14 and 15, 1961.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions (hereinafter referred to as the Agreement) between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

At the time of this dispute, employee John A. Diaz, hereinafter referred to as the Claimant, was the regular assigned occupant of Relief Position No. 21 with the following work schedule:

Saturday	Engine Crew Dispatcher No. 99	8 A. M.-4 P. M.
Sunday	Engine Crew Dispatcher No. 129	8 A. M.-4 P. M.

By letter dated May 14, 1962 (Carrier's Exhibit C), Petitioner's General Chairman appealed the claim, with Division Chairman's claim embodied therein, to Carrier's Assistant Manager of Personnel, contending, "Claimant did not know Mrs. Konvisser was working the short vacancy and, furthermore, could not have known because she had completed her shift when he was commencing his."

By letter dated September 14, 1964 (Carrier's Exhibit D), Carrier's Assistant Manager of Personnel denied the claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute concerns a claim by John A. Diaz, for compensation as alleged by him in his claim, for refusal of the Carrier to assign him to the short vacancy on Assistant Service Clerk Position No. 24, by reason of the Carrier, on or about the 4th day of December, 1961, arbitrarily assigning a junior employe, one Sarah Konvisser, to the position, thereby depriving the Claimant, a senior employe, of the opportunity to perform services thereon. The Claimant also alleges that he had no notice of the vacancy.

The Carrier takes the position that Rule 34 is applicable; that by its terms Rule 34 is clear and not ambiguous; that under the rule the Claimant was not entitled to notice; that the Claimant's seniority date gave him no implied right to be notified of or solicited to fill this short vacancy, that no rights flow inherently from such seniority; that all rights that an employe can claim as the result of establishing a seniority date are created by the provisions of the agreement; that the Claimant failed to apply for the position, in writing, as he was required to do by the terms of the agreement; that Mrs. Konvisser having applied for the position, in writing, had a perfect right to the same.

The material and pertinent facts are not in dispute. All the parties agree that Rule 34 of the agreement is applicable in this matter. They also agree that the employes involved in this dispute at the time of the dispute were assigned employes. They also agree that the Claimant at the time had seniority.

The burden of proving that the Carrier acted in an arbitrary manner in this matter is upon the Claimant.

We find no affirmative proof in the record to sustain the contention of the Claimant that the Carrier acted in an arbitrary manner in assigning junior employe Sarah Konvisser to the short vacancy on Assistant Service Clerk Position No. 24.

A review of the record before us does not show that the Carrier acted in a capricious or arbitrary manner in this matter. The record clearly shows that the Claimant did have sufficient opportunity to exercise his rights to qualify for the position in the manner required by the agreement, but failed to do so. By reason of his employment, the Claimant knew of the practice of the Carrier and the method it used in the filling of this position in former years. He also knew what the qualifications were to perform the requirements of the position, which qualifications the Carrier certainly had an inherent right to specify. Assuming that the Claimant had the required

seniority, Rule 34(c) of the agreement which is very clear and unambiguous, provides that the position will be filled by ". . . the senior assigned employee who makes written application therefor and is qualified for such vacancy, . . ." The record is clear and it is not denied by the Claimant that he did not comply with this provision of the rule. He did not make written application for the position, nor does the record show, affirmatively, that the Claimant had the knowledge and experience to qualify for the position.

Carrier did not violate the provisions of Rule 34, Short Vacancies, nor did it act in an arbitrary manner in making the assignment to Mrs. Konvisser.

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 did not violate the agreement between the parties as alleged.

Claim (a) should be denied; claim (b) should be dismissed.

AWARD

Claim (a) denied; Claim (b) dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1966.