

Award No. 14310
Docket No. CL-15048

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Harr, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5577) that:

(a) The Southern Pacific Company violated the Agreement between the Parties on Saturday, November 25, 1961, at San Francisco, California, when it failed to call and use Mr. J. C. VanDerveer for Information-Ticket Clerk Position No. 177 in accordance with his seniority rank; and,

(b) The Southern Pacific Company shall now be required to allow Mr. J. C. VanDerveer eight (8) hours' compensation at the rate of Information Chart Clerk on November 25, 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.

On Saturday, November 25, 1961, a vacancy existed on Information-Ticket Clerk Position No. 177, hours 10:30 A. M. to 7:00 P. M., rest days Thursday and Friday, due to absence of the regular incumbent Mr. V. Stanley. Carrier called and used Miss Anne Harvey therefor notwithstanding her seniority date October 21, 1942 placed her junior to Mr. J. C. VanDerveer, hereinafter referred to as the Claimant, whose seniority date is June 26, 1941. At the time of this dispute Claimant was assigned to Rate Clerk Position No. 119, hours 10:30 A. M. to 7:00 P. M., rest days Friday and Saturday.

Pursuant to claim filed by Claimant, Mr. W. Perry Spachman, District Passenger and Public Relations Representative, wrote the Claimant and advised that as he could not be reached by telephone at 3:40 P. M. and 4:10 P. M. on Friday, November 24, he was considered unavailable for the vacancy on November 25 and the claim was denied.

OPINION OF BOARD: The sole issue to be decided in this case is whether, when failing to reach the Claimant by telephone at 3:40 P. M. and 4:10 P. M., November 24, 1961, to give him a call for service at 10:45 A. M., November 25, 1961, Carrier properly called and used a junior clerical employee at the point involved. Carrier contends that such action was proper and the only reason Claimant was not used was that he was not available.

There is no rule in the agreement which specifies time limits within which employees will be called for service of the nature involved in this case. The only rule of the agreement involved here is Rule 26(a), reading:

"(a) Seniority begins at the time employee's pay starts on the seniority district and on the roster where service is first performed. Where two or more employees enter upon their duties at the same hour on the same day, the employing officer shall at that time, designate the respective rank of such employees."

The issue has been limited by the parties during the handling on the property and in their respective submissions.

The Carrier is estopped from asserting that Claimant is not entitled to the work in question by reason of his seniority.

At page 5 of their original submission (R-17) Carrier states:

"Carrier maintains it met its obligation when it attempted to call the claimant, who was admittedly not at home when the call was placed at 3:40 P. M. and 4:10 P. M., for the extra work which would develop at 10:45 A. M. on the next date following, and, lacking any agreement provision or understanding that a time element must be set for calling employees for vacancies or extra work, that the Carrier was not restricted from calling the next available employee for the extra work when the claimant failed to answer his residence telephone."

Again at page 1 of their answer to Employees' Submission (R-39) Carrier states:

"The issue to be resolved in this case is whether or not Carrier demonstrated reasonable diligence in the matter of calling claimant for work to which he was entitled by reason of his seniority on the date of this claim."

The Employees point out that Claimant was home at 4:30 P. M. on Friday November 24, and all day Saturday, November 25. This statement is not disputed by Carrier. They contend that two calls within a half hour period eighteen hours prior to the starting time of the vacancy did not constitute a diligent effort on Carrier's part to reach the senior employee.

We feel that the Employees position is sound. The Carrier has admitted his right to the work by reason of seniority and admits it made no attempt to contact him after 4:10 P. M. on November 24.

Even without a rule which specifies time limits within which employees will be called Carrier is bound to make an effort to protect rights which by its own admission Claimant was entitled. The procedure followed by the Carrier cannot be considered a diligent effort to protect Claimant's rights. We

feel that the Claimant was available to perform the work in question and that the claim should be sustained.

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 Agreement has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1966.