

Award No. 14421

Docket No. CL-14820

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 5515) that:

1. Carrier violated the Clerks' Rules Agreement at Tacoma, Washington when it permitted an employee to return to his original seniority district following his removal from a position outside the scope of the Clerks' Agreement and displace an employee assigned to a temporary vacancy.

2. Carrier shall now be required to compensate Employee E. B. Wadkins for a day's pay at the rate of Car Clerk Position No. 6584 for each work day of the position during the period May 7 to 14, inclusive, 1963.

EMPLOYEES' STATEMENT OF FACTS: Employee C. M. Tveter is the regularly assigned occupant of Car Clerk Position No. 6584 at Tacoma, Washington in Seniority District No. 45.

Employee E. B. Wadkins, who has a seniority date of August 2, 1943, is a furloughed employee in Seniority District No. 45.

Employee C. M. Tveter was off account illness beginning in April 1963 and employee E. B. Wadkins was recalled from the furloughed list to fill the vacancy on Tveter's Car Clerk Position No. 6584.

Due to employee Tveter's continued absence account illness, Car Clerk Position No. 6584 was bulletined as a temporary vacancy on May 6, 1963.

Prior to May 1, 1963 or thereabout, employee W. F. Fogelstedt, who has a seniority date of April 17, 1938 in Seniority District No. 45, was the regularly assigned occupant of the position of Assistant Regional Data Manager in the Regional Data Processing Office in Seniority District No. 157 at Seattle, Washington.

Being the senior qualified employee making request to temporarily fill Position No. 6584 pending assignment thereof, employee Fogelstedt was, on May 7, 1963 temporarily assigned to fill Position No. 6584 in accordance with the provisions of aforementioned Rule 9(f).

On May 15, 1963, furloughed employee Fogelstedt was assigned by bulletin to Position No. 6584 as a result of his having been the senior qualified applicant therefore.

When Position No. 6584 was advertised by bulletin on May 6, 1963, furloughed employee Wadkins did make application therefore, but she did not make request to temporarily fill same pending assignment under the provisions of Rule 9(f).

There is attached hereto as Carrier's Exhibit B copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of August 23, 1963.

(Exhibits not reproduced.)

OPINION OF BOARD: The chronology of events, insofar as is here relevant, may be summarized as follows:

April 10, 1963. Position No. 6584 at Tacoma, Washington became temporarily vacant due to illness of incumbent C. M. Tveter. It was not known how long he would be absent. The position was not bulletined. No regularly assigned employee asked to fill the job. Furloughed employee E. B. Wadkins (seniority date August 2, 1943) was then recalled. (Rule 12 (d) provides, in part, that "When . . . vacancies occur, furloughed employees, when available, shall be recalled and returned to service in the order of their seniority and employees shall be required to return when so called.")

May 3, 1963. Carrier learned that Tveter, the sick employee, would be absent at least another two or three weeks.

May 6, 1963. Carrier bulletined a temporary vacancy on Position No. 6584. (Rule 9 (a) declares, in relevant part, that ". . . vacancies (except those of thirty (30) calendar days or less duration) will be promptly bulletined . . .") Wadkins applied for the job. So did W. F. Fogelstedt (seniority date April 17, 1937), an employee in furlough status since April 16, 1963 (who had been removed from an exempted position in another seniority unit). Fogelstedt also asked to "protect Position No. 6584 Tacoma beginning May 7th pending assignment by bulletin."

May 7, 1963. Carrier assigned Fogelstedt to Position No. 6584 and removed Wadkins. Petitioner's objection led to the claim now before us. (On May 15, 1963 Fogelstedt was assigned by bulletin to Position No. 6584 without Organization protest.)

Carrier asserts it acted correctly in assigning Fogelstedt to Position No. 6584 during the period May 7 through 14 since Rule 9 (f) requires that "Bulletined positions filled temporarily pending an assignment, shall be filled by the senior qualified employee requesting the position." Petitioner, on the other hand, argues that (1) since furloughed employees have no former posi-

tion to which to return, Rule 12 (d) — not 9 (f) — applies to filling vacancies; (2) nothing in 12 (d) permits a senior furloughed employee to displace a junior one on a vacancy to which the junior has been recalled or to request a bulletined position pending assignment; in fact, 12 (d) provides only for recalling furloughed employees; (3) Fogelstedt's rights were circumscribed by the provisions of Memorandum of Agreement No. 6 which declares, in Item 1: "An employee voluntarily relinquishing a position listed in Rule 1 (b), 1 (c) or 1 (d) may perform clerical extra work, make application for a bulletined vacancy or new position, but will not be able to exercise seniority to displace a junior employee."

It seems clear that, as of May 6, Wadkins was the occupant of a position and, as such, had the right to bid for the bulletined vacancy in accordance with Rule 9 (a). It is understood, moreover, that when all bidders own jobs, the senior bidder, if he so requests, receives an interim assignment to the bulletined vacancy pending final award in accordance with Rule 9 (f). Fogelstedt, on May 6, also had the right to bid for the bulletined vacancy, only his rights were based on Memorandum No. 6, Item 1.

Since Wadkins was the occupant of a position, she had the right (which she did not exercise) to utilize 9 (f) and request the bulletined job "pending an assignment." Did Fogelstedt have a similar right? Petitioner argues, with some cogency, that Fogelstedt, as a furloughed man, had no 9 (f) right. But, if he were to be considered simply as an employee on furlough, he would not have any bidding rights at all since 12 (d), which covers such persons, provides only for recalls, not for bidding. In actuality, however, Fogelstedt was in the special status of a Memorandum No. 6 employee who, when his exempt job was terminated, could not displace a junior worker (as could a regular employee), but could make application for a bulletined vacancy (unlike a furloughed man). Memorandum No. 6 does not refer to the specific contract Articles which cover applications for bulletined vacancies. However, it seems apparent that Rule 9, Bulletined Positions is applicable. And included among the provisions of Rule 9 is the 9 (f) clause permitting the senior qualified applicant, upon request, to temporarily fill the bulletined position. There is no justification for holding that a man who has the right to use 9 (a) does not have the right to use 9 (f).

Fogelstedt, then, had the right, under Memorandum No. 6, to request immediate assignment to Position No. 6584 when it was bulletined. The only remaining question is whether, in using that right, he exercised his seniority "to displace a junior employee," an action specifically barred by Memorandum No. 6. We think not. Had Fogelstedt, upon termination of his exempt job, requested Wadkins' position (while she was occupying it on a temporary basis prior to bulletining), he would have been using his seniority to displace her. But, on May 6 he was merely utilizing his Rule 9 rights to bid on a newly bulletined position. This cannot be deemed displacement.

Accordingly, Claim must be denied.

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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1966.