

Award No. 15463
Docket No. CL-15865

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5872) that:

1. The Carrier violated the Clerks' Agreement at San Antonio, Texas, by using a person who held no seniority rights in Group 1 to fill a temporary vacancy in Group 1 on position of Transfer Clerk No. 1106.

2. E. V. Rose and J. H. Lucas, Jr., who held seniority rights in Group 1 and were available, be compensated as follows:

Employee	Hours Pro Rata	Dates
E. V. Rose	8 each date	August 10, 13, 14, 17, 20 and 21, 1964
J. H. Lucas, Jr.	8 each date	August 11, 12, 18 and 19, 1964

EMPLOYEES' STATEMENT OF FACTS: On the above claim dates the regularly assigned occupant of position of Transfer Clerk No. 1106 (Group 1) was absent due to illness. Because the Extra Board was exhausted, Mr. Sanchez was used to fill this vacancy, instead of calling a regularly assigned Group 1 employee on overtime basis. Mr. Pablo Sanchez was a furloughed Group 3 employee, and had never worked or established seniority in Group 1.

On September 2, 1964, Division Chairman J. H. Lucas, Jr. filed claim as result of Carrier using Mr. Sanchez to fill the temporary vacancy on Transfer Clerk No. 1106 position. (Employees' Exhibits Nos. 1 and 2.)

Superintendent G. T. Graham declined the claim on September 21, 1964. (Employees' Exhibits Nos. 3 and 4.)

Further appeals were made up to and including the highest designated Carrier official to receive such claims. (Employees' Exhibits Nos. 5, 6, 7, 8 and 9.)

The agreement was not violated. Claims are without merit, and are respectfully declined.

Yours truly,

/s/ B. W. Smith"

13. Claim was progressed in the proper manner on the property and is properly before the Board.

OPINION OF BOARD: Carrier used a furloughed Group 3 employee to fill a temporary vacancy in Group 1 position of Transfer Clerk No. 1106, caused by the absence of the regularly assigned incumbent, when there were no extra or furloughed employees available with seniority in Group 1. Petitioner contends that Carrier violated the Agreement between the parties by assigning the furloughed Group 3 employee to a Group 1 position on a temporary basis because he held no seniority in Group 1 and that the Agreement reserves all Group 1 work to Group 1 employees. The instant claim is in behalf of regularly assigned Group 1 employees, who, Petitioner maintains, should have been assigned to the temporary vacancy on an overtime basis.

Carrier contends that the furloughed Group 3 employee was promoted under Rule 7 (d) of the Agreement to perform the disputed assignment at the straight time rate, and that the claim represents an attempt to deny Carrier the right to promote employees to fill temporary vacancies caused by the absence of regularly assigned employees when there are no extra or furloughed employees available under Rule 25 of the Agreement between the parties.

The pertinent provisions of the Agreement are as follows:

"RULE 1. EMPLOYEES AFFECTED

(a) These rules shall govern the hours of service and working conditions of all of the following class of employees of the above named railroads and subsidiary companies now in existence.

Group 1. Clerks, Machine Operators, such as typewriters, adding and calculating machines, bookkeeping, accounting, timekeeping and statistical machines, dictaphones, key-punch, teletype (except teletypes used exclusively in the transmission of messages and reports and located in offices which are equipped with telegraph facilities), and all other similar equipment used in the performance of clerical work or in lieu of clerical work.

Group 2. All other office, station and store employees, including office boys, messengers, train announcers, gatemen, baggage and parcel room employees, train and engine crew callers, telephone switchboard operators, elevator operators, office, station, warehouse, and store watchmen, janitors, and all other employees performing similar work.

Group 3. Laborers employed in and around stations, stores and warehouses.

(b) Positions referred to in this agreement belong to the employees covered thereby, and no position shall be removed from this agreement except by agreement.

(c) This agreement shall not apply to individuals where amounts of less than thirty dollars (\$30) per month are paid for special service which only takes a portion of their time from outside employment or business, or to individuals performing personal service not a part of the duty of the Carrier."

"RULE 6. SENIORITY ROSTERS

(b) Seniority roster shall include all employees in each seniority district and will be subdivided into the three groups provided in Rule 1, except in general and division offices, office boys, messengers, and building custodians shall hereafter be included in Group 1 seniority roster."

"RULE 7.

PROMOTIONS, ASSIGNMENTS AND DISPLACEMENTS

(d) Employees promoted from Group three (3) to Group two (2) positions or from Group two (2) or Group three (3) to Group one (1) positions, shall acquire seniority in the higher group effective as of the date of promotion and shall retain and continue to accumulate seniority in Group two (2) or three (3).

(e) If displaced, they shall be required to exhaust their seniority rights in group and seniority district in which employed before being permitted to exercise rights over employees in group or seniority district from which promoted, and must return to Group one (1) as soon as their seniority will permit."

"RULE 25. EXTRA BOARD

(c) If there are no available employees holding seniority in that group, senior employees in other groups who desire to perform extra work will be called."

The record discloses that over the years, 60 employees in Group 2 have been promoted to Group 1, 4 employees from Group 3 to Group 1, and 3 employees to Group 2 in accordance with the provisions of Rule 7 (d). In fact, both Claimants previously held positions in Group 2 and were promoted to positions in Group 1. It also should be noted that a primary purpose for defining various classifications of clerical employees in Rule 1 (a) is to identify the higher skilled employees for pay purposes and to preserve to the group the higher rated positions. However, it does not limit them to the performance of particular clerical work. Award 7167. Ordinarily, employees on one seniority roster should not be used to perform the work of positions on another seniority roster. However, when a temporary vacancy exists that

cannot be filled from the roster of a particular Group under Rule 1 (a) of the Agreement, and there are no extra unassigned or furloughed employees available with seniority in that group, the promotion of a furloughed employee in another group under Rule 1 (a) to fill the temporary vacancy is proper. Awards 6266, 7167, 9047. This Board has held on numerous occasions that a Carrier is not bound to pay the punitive rate for work performed if it can be accomplished at the straight time rate, within the framework of the collective bargaining agreement. (Award 7227.)

We have carefully considered the earlier Awards relied on by Petitioner in support of the instant claim and feel the factual situations are readily distinguishable. The instant dispute involves the promotion of a furloughed employee with established seniority in Group 3 to a temporary vacancy in a Group 1 position in the absence of an extra or furloughed employee with seniority in Group 1. No new hiring is involved in this case.

In view of the foregoing, we must deny the claim.

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 5th day of April 1967.