

Award No. 15677
Docket No. CL-16179

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

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

THE OGDEN UNION RAILWAY AND DEPOT COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6000) that:

(a) The Carrier violated the terms of the existing Agreement when, on October 8, 1964 it assigned Mrs. Bonnie T. Simpson to Machine Operator Position 8-3 in the Yard Office to relieve a one-week vacation vacancy beginning at 12:01 A. M., October 12, 1964; and, when, on October 9, 1964 it further assigned Mrs. Bonnie T. Simpson to Miscellaneous Clerk Position in the Superintendent's Office to begin at 8:00 A. M., October 12, 1964, thereafter the Carrier required Mrs. Simpson to work the shift on position 8-3 beginning at 12:01 A. M., October 12, 1964 — and it further required that Mrs. Simpson work the shift on position of Miscellaneous Clerk beginning at 8:00 A. M., October 12, 1964; and

(b) The Carrier shall now be required to pay Mrs. Simpson for an additional four days' pay at the established pro-rata rate of Machine Operator for dates of October 13, 14, 15 and 16, 1964; and

(c) The Carrier shall now also be required to pay Mrs. Simpson at the time and one-half rate of pay of the established rate of Miscellaneous Clerk, less monies previously paid her, for each of the dates of October 12, 13, 14, 15 and 16, 1964.

EMPLOYEES' STATEMENT OF FACTS: Simply stated, this claim involves a lone extra employee, Mrs. B. T. Simpson, whom the Carrier assigned to relieve two parallel vacation vacancies, the first beginning at 12:01 A. M., and the second beginning at 8:00 A. M., both on October 12, 1964. She was required to begin and work both positions on the date of October 12, 1964. On the following date of October 13, 1964 she was released from the first assigned position and allowed to work the second assignment in violation of the rules agreement.

Mrs. B. T. Simpson is an established clerical employee of The Ogden Union Railway and Depot Company with seniority date of April 11, 1956. Over

OPINION OF BOARD: An extra employe, Mrs. B. T. Simpson, was assigned to fill a one-week vacation vacancy on Machine Operator Position 8-3 which would commence at 12:01 A. M., October 12, 1964. This assignment was made on October 8, 1964.

The next day, October 9, Mrs. Simpson made written application for another vacancy on a more desirable position to commence October 12. Being the senior qualified employe who made application, she was also assigned to this vacancy. She actually filled and worked both vacant positions on October 12, but thereafter she filled and worked only the position for which she had made written application.

The Employes contend, in effect, that Mrs. Simpson could not exercise her seniority rights to bid on vacancies once she had been assigned from the extra board to fill a vacancy. This Board finds no language in the Agreement or in the Extra Board Agreement of January 1, 1957 to so restrict Mrs. Simpson's seniority rights.

Rule 31(d) of the Agreement provides:

"(d) When a vacancy of five (5) working days or more is to be filled, it will be filled by the **senior qualified employe** making written application. Such employe shall take the conditions of the assignment, including rest days, until such time as the position is again filled by a regular occupant." (Emphasis ours.)

This rule in no way limits its coverage to regular employes. That it is not intended to be so limited is evidenced by the fact that elsewhere in Rule 31 are references to the "senior qualified extra employe" and to the "senior qualified regular employe." Mrs. Simpson was the senior qualified employe—even though an extra employe—who made application for the position in question, and the Carrier had no alternative but to honor her application.

The Board finds no language in Rule 31(d) in conflict with any provision of the Extra Board Agreement. However, consistent with the agreement, the Claimant is entitled to punitive rate of pay for the second tour of duty on October 12.

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 Employes involved in this dispute are respectively Carrier and Employes 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 by the Carrier as claimed by the Employes.

AWARD

Claim disposed of in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1967.

LABOR MEMBER'S DISSENT TO AWARD 15677, DOCKET CL-16179

The Extra Board Agreement provided, among other things, that it was to " * * * supersede any rules, agreement or practice in conflict therewith * * *."

It was an agreement providing for the filling of vacancies by employees on the Extra Board on a seniority basis. For example, since one seems necessary, the senior employee on the Extra Board at the time a vacancy was filled was to be used. The next senior employee on the Extra Board then became the senior employee and was entitled to fill the next vacancy. Nothing was contained in that Extra Board Agreement which indicated that "vacancies" would be "filled" on a day to day basis, or that once "filled" the vacancy still existed. In view thereof the efficacy of that Extra Board Agreement depended on the Organization's theory and arguments, the parties past practice and application, prevailing. It did not prevail.

The Referee was simply unable to understand that a junior employee on the Extra Board might well be the " * * * senior qualified employee making written application" for a vacancy under Rule 31(d) and thus, under the unfortunate interpretation arrived at by the Referee, be entitled to fill the vacancy in preference to the senior employee on the Extra Board who had been required to hold himself available for the purpose of filling vacancies but had not made "written application."

By his interpretation here the Referee has done what either of the parties could do under the terms of that Extra Board Agreement i.e., cancel.

The Award is in error for it gives no meaning at all to the Extra Board Agreement and allows a rule and "practice," which is "in conflict therewith" to nullify the Extra Board Agreement. I therefore dissent.

D. E. Watkins
Labor Member
6-29-67

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