



Award No. 16679

Docket No. CL-16382

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE 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-5991) that:

(a) The Southern Pacific Company violated the current Agreement between the parties when, on May 28, 1964, it refused to accept an application from Mr. Harry F. Zajakala to fill a vacancy on Information Clerk Position No. 224; and,

(b) The Southern Pacific Company shall now be required to allow Mr. Harry F. Zajakala eight hours' additional compensation at the pro rata rate of Position No. 224 June 3, 1964, and each work day thereof through June 14, 1964.

NOTE: The original claim was filed for the period June 1, 1964, through June 14, 1964, however, as the rest days of Position No. 224 were Mondays and Tuesdays, June 1 and 2 was eliminated from the above statement of claim.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including subsequent 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 Claimant was assigned to Relief Information Clerk Position No. 265, rest days Wednesday and Thursday.

On May 28, 1964, he filed Form C.S. 4389, Application for Vacancy, with Mr. M. L. Aronson, Supervisor, Central Travel Service Agency, to fill Information Service Clerk Position No. 224, rest days Monday and Tuesday,

Miss J. Housman was used to fill position No. 224 under provisions of Rule 34(b) of the current agreement and she remained thereon until that position was awarded to the successful applicant by seniority bid.

On June 8, 1964, claimant filed application for the vacancy on Position 224 as advertised by Position Notice No. 5 (Carrier's Exhibit A) and being the successful senior applicant, claimant was assigned to Position No. 224 by Position Notice No. 6 dated June 16, 1964 (Carrier's Exhibit B).

5. By letter dated June 17, 1964 (Carrier's Exhibit C), Petitioner's Division Chairman submitted claim to Carrier's Assistant General Freight and Passenger Agent in behalf of claimant for eight hours' additional compensation at the rate of Position No. 224, Information Clerk, \$21.4824 per day for each work day of that position from June 1, 1964 to June 14, 1964 contending that Rule 34(c) of the current agreement was violated when claimant's application for the short vacancy was rejected. By letter dated June 26, 1964 (Carrier's Exhibit D), Carrier's Assistant General Freight and Passenger Agent denied the claim.

By letter dated July 30, 1964 (Carrier's Exhibit E), Petitioner's General Chairman appealed the claim to Carrier's Vice President-System Freight Traffic and by letter dated September 4, 1964 (Carrier's Exhibit F), Carrier's Vice President-System Freight Traffic denied the claim. By letter dated October 12, 1964 (Carrier's Exhibit G), Petitioner's General Chairman advised that the claim would be appealed.

By letter dated October 12, 1964 (Carrier's Exhibit H), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated March 9, 1965 (Carrier's Exhibit I), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant, in this dispute, was assigned to Relief Information Clerk Position No. 265, with rest days of Wednesday and Thursday, at the Carrier's Central Travel Service Agency, at San Francisco, California.

There was also at that office, Position No. 224, Information Clerk, with assigned hours 7:00 A. M. to 3:30 P. M. with rest days of Monday and Tuesday. This position was vacated by the incumbent on May 31, 1964.

On May 28, 1964, three days before Position No. 224 became vacant, Claimant filed an application with Mr. Aronson, Supervisor, Central Travel Service Agency, to fill the vacancy in Position No. 224, to become effective as of the 21st day of June, 1964. The application was returned to the Claimant, by Mr. Aronson, with the notation "Not Approved-MLA."

Under date of June 1, 1964, the Carrier advertised Position No. 224, by bulletin, dated on that day, pursuant to and in accordance with the provisions of Rule 33 of the Agreement.

On June 1, 1964, Claimant, in accordance with the terms of the bulletin issued and/or advertised by the Carrier, on that day, filed another application to fill the vacancy in Position No. 224.

June 1 and June 2, 1964, were the bulletined rest days of Position No. 224. The first day that the position was bulletined for work was Wednesday, June 3, 1964. Instead of filling the position on June 3, 1964, the Carrier blanked the position for that day.

On June 4, 1964, Carrier filled the position with Miss J. Housman, who occupied the position until displaced by the Claimant on June 17, 1964.

We note from an examination of the record before us that certain issues are raised which we find were not raised or discussed on the property. Having failed to raise or discuss these issues on the property they may not be raised here. They will not be considered by this Board. See Awards 14341, 14342, 14531.

Claimant asserts that during conferences on the property, the Carrier offered to compromise the matter by allowing the Claimant one day's pay for June 3, 1964. This is denied by the Carrier. Assuming that such offer to compromise was made, we have held on any number of occasions that offers of compromise and settlement of a claim which are not accepted may not and should not be deemed an admission against the interest by the offering party. An offer made and rejected or refused is no longer binding on the party who makes it. It is not admissible as evidence. See Awards 12951; 10782; 10604.

The claim before us is that the Carrier "violated the current Agreement between the parties when, on May 28th, 1964, it refused to accept an application from Mr. Harry F. Zajakala to fill a vacancy on Information Clerk Position No. 224." (Emphasis ours.)

The Carrier denies the alleged violation of the Agreement.

The Claimant, in support of his contention, asserts that having filed, on May 28, 1964, a "bona-fide" application with the Carrier, the Carrier was obligated to assign Position No. 224 to him on the first work day after it received his application of that date.

Under the Agreement the Carrier had the prerogative to fill the position in question pursuant to and in accordance with the applicable provisions of the Agreement. It decided to bulletin the position pursuant to Rule 33. The Claimant does not deny that Position No. 224 was properly advertised by bulletin dated June 1, 1964, by the Carrier, in accordance with and pursuant to the provisions of Rule 33 of the Agreement.

Rule 33 which concerns us reads as follows:

"RULE 33.

ADVERTISING AND ASSIGNING POSITIONS

(a) All new positions and vacancies, except those of student truckers and laborers, except as provided in section (h), shall be advertised at least semi-monthly.

(b) Notices will be promptly posted in places accessible to all employees affected and will be open for application for a period of seven (7) calendar days from employees in the seniority district where

such new positions and vacancies occur. A copy of all notices issued will be furnished to Division Chairman.

(c) Notices will show:

Locations
Positions
Hours of Service
Rates of Pay

(d) Applications for such positions will be filed with the designated officer within seven (7) calendar days exclusive of the date of the notice. The notice shall set forth the closing time and date for accepting applications.

(e) Assignments will be made and notices issued within eight (8) calendar days after closing date of receiving applications and successful applicant will be placed on position as soon as practicable, provided however, that if said applicant is not placed on his newly assigned position within fifteen (15) calendar days from the date of assignment notice, he shall be paid the established rate of either his newly assigned position or the position on which he works, whichever rate is the greater, and in addition thereto a penalty allowance of one dollar (\$1.00) per work day until placed on his newly assigned position."

We first determine the question as to whether or not the application filed by the Claimant, under date of May 28, 1964, three days before the vacancy occurred in the position and four days before the position was bulletined, was a proper application and one authorized under the terms and provisions of the rules of the Agreement.

The burden rests with the Claimant to prove that his application dated May 28, 1964, was timely and properly made and that it was made in accordance with and pursuant to the provisions of the applicable rules of the Agreement. He must also prove that the action taken by the Carrier on his application dated May 28, 1964, violated some part or provision of the Agreement.

The bulletin, dated June 1, 1964, which listed the position in question, contains the following:

"The following positions are open for application which should be submitted in writing within seven calendar days. Assignment will be indicated hereon within eight calendar days after the closing date for receiving applications.

Time for filing applications for above listed positions closes at 3:00 P. M., P. S. T., June 8, 1964."

The time within which an application must be filed to fill the position is specifically set forth, as required by the rule. Where, as in the dispute before us, the time, within which an application may be filed, is specifically set forth, the time cannot be accelerated by only one of the parties to the Agree-

ment. Nor does this Board have the power to enlarge or to diminish the time within which the application was or could be made. It can only be done by the mutual consent of the parties to the Agreement.

We are of the opinion that an agreement made between a Carrier and an Organization or Brotherhood represents a mutual understanding and a mutual undertaking to observe not only the spirit but also the letter of the agreement as well.

It is obvious, from the record in this dispute, that the application dated May 28, 1964, did not comply with the applicable rules of the Agreement. Having failed to comply with the rules, the application was ineffective.

The claim will be denied.

We do not consider or decide any other issue raised.

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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1968.