



Award No. 18633
Docket No. CL-18844

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6798) that:

1. The Carrier violated the Agreement between the parties when they failed to bulletin the Janitor position J-1 formerly held by Charles Pierce in accordance with Rule 6.
2. The Carrier shall be required to pay the Claimant Mr. J. B. Brown eight (8) hours pay pro rata rate Janitor for January 27, 1969 and for each subsequent work day of the assignment thereafter until the position was abolished on March 3, 1969.
3. Interest at the rate of six percent (6%) to be compounded annually be granted from the date of this claim until such time restitution is made to make Claimant whole.

EMPLOYEES' STATEMENT OF FACTS: Mr. Pierce was regularly assigned as a Janitor holding position J-1. On January 20, 1969, Pierce was promoted to the night Asst. Station Master position. The Janitor position (J-1) vacancy was not promptly bulletined and was later abolished on March 3, 1969, subsequent to filing of claim.

A claim was timely filed by the Local Chairman with Mr. P. L. Bolander Station Master (Employees Exhibit No. 1) and a decision rendered April 10, 1969 denying the claim (Employees' Exhibit No. 2).

On May 16, 1969 the General Chairman appealed claim to Superintendent, Mr. W. R. Apple (Employees' Exhibit No. 3). A conference was held on June 13, 1969, and his decision rendered June 16, 1969 denying the claim (Employees' Exhibit No. 4).

On July 14, 1969, General Chairman appealed case to the Manager of Personnel (Employees Exhibit No. 5) the highest officer designated by the Carrier to whom appeals can be taken. The Manager of Personnel without benefit of a conference rendered his decision on September 8, 1969, denying

the claim (Employees' Exhibit No. 6). Further correspondence in response to the decision of the Manager of Personnel was made on January 22, 1970 (Employees Exhibit No. 7) and final conference held February 3, 1970.

There is no dispute between the parties as to the facts pertaining to date position J-1 was vacated and date position abolished, nor the fact J. B. Brown, a furloughed employe, does hold seniority in Janitor Department with full rights to bid and be assigned to any position bulletined, under existing rules, in accordance with his seniority. The fact the vacancy was filled by junior employes transferred into the department is established (Employees' Exhibit No. 2).

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Prior to January 20, 1969, Charles Pierce held a regular position as janitor with hours 10:30 P. M. to 7:00 A. M.

Effective January 20, 1969, Mr. Pierce was promoted to an excepted position, night Assistant Stationmaster, and his janitor position was blanked.

OPINION OF BOARD: The issue herein involves Carrier's janitorial force. It appears from the Record that a Mr. Pierce, holding janitor position J-1, was promoted to Night Assistant Station Master Position. The janitor position (J-1) vacancy was not promptly bulletined and was abolished March 3, 1969.

The Petitioner contends that the Claimant, a furloughed employe, was denied the right to hold the job because it was not rebulletined, but the job was filled every night by a transferred protected employe. In handling on the property the Carrier's Station Master stated:

"The janitor work and duties that had been performed by Mr. Charles Pierce prior to his promotion to Assistant Station Master were performed by employes transferred into the janitor force by Implementing Agreement and who do not hold a regular assignment."

The Petitioner contended on the property that if Carrier had bulletined the position, the Claimant, being the senior qualified employe, would have been assigned the position.

The Carrier maintains that there is no mandatory requirement that positions be bulletined and that no one performed work exclusive to Janitor Position J-1.

We do not consider this as a question as to Carrier's right to fill or not to fill a vacant position. The fact remains that the janitor force was augmented from the time the position was vacated by Pierce until abolished on March 3, 1969. There was no denial on the property that the Claimant would have been entitled to the position if bulletined. Under these facts, we find that Claimant's seniority rights were violated. Parts 1 and 2 of the claim will be sustained. The Petitioner has cited no rule in support of Part 3 of the claim and it will 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 violated to the extent shown in Opinion.

AWARD

Parts 1 and 2 of claim sustained; Part 3 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July 1971.