

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21841
Docket Number CL-21808

John P. Mead, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The National Railroad Passenger Corporation

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8224), that:

(1) Carrier violated the terms of the current Agreement particularly Rules 10, 5, 1, 2 and 6, as well as others, when it failed to allow Mr. Hedlund to assume the full responsibilities of the position of cashiering in the cage as ticket clerk, the position he bumped on to December 16, 1974.

(2) Mr. Hedlund shall now be paid the difference in rate of pay he will be paid, the higher rate of the two positions and any additional personal expense, plus \$3.00 per day for the period withheld from the new assignment beyond the time limit, above described, for each and every day this violation is allowed to continue.

OPINION OF BOARD: Upon abolishment of his Ticket Clerk position at Pasadena in December 1974, claimant exercised seniority to bump into a position at Los Angeles Union Passenger Terminal. The carrier contends that he displaced into a "Ticket Clerk" position while the claimant thought he was acquiring a position which handled all monies similar to Cashier. Claimant was assigned to ticket selling with the hours and days off he desired. The carrier contended that, although some Ticket Clerks handled more money than others, there was no position of Cashier and no position of Ticket Clerk handling all monies.

Claimant believes the denial of a cashier-type position entitles him to pay differential, additional personal expenses and liquidated damages while the violation continues.

The single issue here is factual - whether there was an identifiable position other than "Ticket Clerk" into which claimant displaced. If so, applicable contractual provisions operate to award him the position as his seniority rights and qualifications were not questioned by the carrier.

Examination of the record, including prior awards cited by the parties, leads this Board to the conclusion that the position into which claimant displaced was identified simply as Ticket Clerk. The record lacks sufficient proof in support of claimant's argument. It contains no evidence of the duties being performed by the employee whom claimant displaced, nor any evidence of the way the duties of the position were described at the time the displaced employee entered it, by bid or otherwise. In the absence of such evidence, it is presumed that the position conformed to those previously bid at Los Angeles, and the evidence shows them to have been bid as "Ticket Clerk" with duties described broadly, in these general terms: Ticketing, ticketing accounting, information on rates, schedules, etc., and other duties as assigned."

Claimant relied heavily upon language in R. E. Riddle's response to the initial penalty claim as indicating Riddle's acknowledgement that there was in existence a Ticket Clerk position which was responsible for handling all monies. While such an interpretation of the letter is possible, another reasonable interpretation is that Riddle was merely describing claimant's desires. Later carrier correspondence contradicts claimant's interpretation of the Riddle letter. In any event, this Board must look for better evidence than statements of advocates made subsequent to the filing of the claim. Equally lacking in probative value is the carrier's point that the position of "Cashier" was not established until November 1, 1975, as such action does not rule out the possibility that the position actually existed prior to being so labelled.

Award No. 5306 (Referee Wyckoff) in Docket No. CL-5243 has been cited by claimant as analogous. This Board has given it careful consideration and believes the facts to be at variance with the instant case. In 5306 the record contained considerable evidence of duties being performed in the job immediately prior to the claim, which evidence clearly indicated a separation of duties within the general job classification. In the present case, such evidence is lacking.

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

Claimant has not provided sufficient evidence to support his claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 6th day of January 1978.