

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22043

Docket Number CL-22134

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(Southern Pacific Transportation Company
(Texas and Louisiana Lines

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8432) that:

(1) The Carrier violated the current Clerks' Agreement at Houston, Texas, when on March 5, 1976, it called and used an employee who was not available for service to fill a vacancy on Car Order Clerk Position No. 20.

(2) Carrier shall now be required to allow Mr. R. L. Stolte one (1) day's pay at the time and one-half rate of Car Order Clerk Position No. 20 for March 5, 1976.

OPINION OF BOARD: The Claimant, Mr. R. L. Stolte, is the regular occupant of General Clerk Position No. 232, assigned Saturday through Wednesday, 11:59 p.m. to 7:59 a.m. at the Carrier's Freight Station, Houston, Texas. On Friday, March 5, 1976, there existed a one-day vacancy on Car Order Clerk Position No. 20 with hours 12:00 noon to 8:00 p.m. On March 4, 1976 the Carrier received a prepared overtime request from the Claimant indicating the positions to which he wished to move up and/or work overtime on. Position 20 was not one of the positions the Claimant desired to protect. The request, received at 5:45 a.m. on March 4, 1976, became effective 16 hours after the receipt thereof, which was 9:45 p.m., March 4, 1976. The Carrier called and used Clerk B. E. Rittenhouse to fill the vacancy on Position No. 20 on March 5, 1976. Under Section 10 of Addendum No. 6, Mr. Rittenhouse was not available for a call to work Position No. 20 because he had laid off when called to work a vacancy on Position No. 226 which had a 6:00 a.m. starting time that same date, March 5, 1976, and was thus marked off the Extra Board. By letter dated March 9, 1976, the Claimant filed the instant claim for one day's pay at the time and one-half rate of Position No. 20 because the Carrier used Mr. Rittenhouse to fill the position when he was not available for a call.

The record before the Board indicates that Mr. Rittenhouse was ineligible for a call. The record also clearly indicates that the Claimant was also ineligible for a call. If the Carrier had called the Claimant, it would have made the Carrier susceptible to a claim from someone else. Since the essence of the claim is that the Carrier called an ineligible person to work the position and the Claimant himself was ineligible to work the position, we believe that a sustaining Award would be most inappropriate and unreasonable. We are well aware of the line of Awards of this Board that hold that the standing of an individual Claimant vis-a-vis another employee who might have a better right to make the claim is no defense for the Carrier; and we have no intention of attempting to modify such awards. Our narrow holding is limited to the facts of this particular case, involving as it has the Claim of an ineligible employee that an ineligible employee worked the position in question.

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.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1978.