

C
O
P
Y

SPECIAL BOARD OF ADJUSTMENT NO. 167 (D&RGW)

AWARD NO. 23

Organization's File

102-D-9(a)

Carrier's File

CL-29-56

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

"(1) The terms of the clerks' contract were violated effective on May 8, 1956 when Carrier failed to bulletin a vacancy on Passing Clerk's position created by the regular incumbent being on vacation relief work at Salt Lake freight office.

"(2) That effective May 8, 1956 and each subsequent day thereafter Mr. K. O. Mayfield, regularly assigned as Chief Billing Clerk, shall be paid one day's pay because of this violation of the clerks' agreement."

FINDINGS: Hans Hunger was regularly assigned as Passing Clerk but during successive periods here involved he worked on vacancies and vacation positions instead of his regular assignment and his position of Passing Clerk was worked by Helen Hunger without bulletin.

As declared by Referee Morse in his interpretation, the Vacation Agreement is subject to existing rules agreements and its Article 12 (b) cannot be interpreted to prevent subjecting Carriers to the application of their schedule rules in the filling of positions of employes who are moved up to fill the positions of vacationing employes.

While a vacationer's position is declared by the Vacation Agreement not to constitute a vacancy under any agreement, no such declaration is made as to the position of the employe used to work the vacation position. The position of such employe becomes vacant when he fills the vacationer's position and must be subject to schedule rules covering the bulletining of vacancies. It was so determined in Award 7019 of the Third Division sitting without a referee.

The successive special assignments arranged for and worked by Hans Hunger created a continuing vacancy without break in the position of Passing Clerk and under Rules 10 (a) and 11 (b) that position should have been bulletined. Claimant Mayfield, as the senior employe, was entitled to assignment to the position. In the absence of other rule providing for a penalty, claimant should be reimbursed for loss of earnings (Awards 7019, 5879 and 4730); that is, the difference between his earnings on the position held and what he would have earned on the position sought. The earnings of claimant Mayfield as Chief Billing Clerk were greater than

the earnings of the position of Passing Clerk, which he sought; therefore, there was no monetary loss and no other items of loss were claimed or shown. However, Rule 10 (e) of the Agreement provides that an employe awarded a bulletined position will be paid \$1 per day for each assigned work day in addition to the difference in rate between position occupied and the position sought if not placed on such position within ten calendar days of notification of assignment. We think the refusal to bulletin the position to which claimant was entitled was in substance a refusal to place him on the position awarded by bulletin. The claimant is entitled to \$1 per day on May 8, 1956, and each working day thereafter until the violation ceased to exist.

AWARD: Claim sustained as per findings.

/s/ Mortimer Stone
Mortimer Stone, Chairman, Neutral Member

/s/ D. L. Clavel
D. L. Clavel, Carrier Member

/s/ Wm. J. Donlon
Wm. J. Donlon, Organization Member