

Award No. 6455
Docket No. CL-6460

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

**THE LONG ISLAND RAIL ROAD COMPANY, DEBTOR
Wm. Wyer, Trustee**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the provisions of the Clerks' Agreement and specifically Rule 3-C-1 (e), when it discontinued a number of positions (see statement of facts), at various locations, starting May 4, 1951, and thereafter, and
2. The Carrier shall restore all employees affected to their respective positions as of May 3, 1951, and
3. The Carrier shall pay all adversely affected employees, for each day unassigned and to each adversely affected employee who was required to exercise seniority to a lower rated position, monetary losses at going rates of pay, retroactive to May 4, 1951.

EMPLOYEES' STATEMENT OF FACTS: There is in effect a Rules Agreement, effective July 1, 1945, covering clerical, other office, station and storehouse employees between this Carrier and this Brotherhood. This Rules Agreement will be considered as a part of this Statement of Facts. Various Rules and Memorandums thereof may be referred to from time to time without quoting in full.

This dispute involves the question of whether or not the Carrier has the right to discontinue an established practice of many years by not posting Bulletins in places accessible to all employees of the seniority districts affected, on or before the date a position is abolished.

Prior to May 4, 1951, a Bulletin, notifying all employees in the seniority district, was posted on all Bulletin Boards, prior to or on the effective date a position was abolished, in accordance with Rule 3-C-1 (e).

Further, that the Claimants in this instance could not have earned the amount claimed under any circumstances. This statement is supported by the fact that regardless of whether the bulletin in question was posted at the time these positions were abolished—prior to their abolishment—or “promptly” following their abolishment, the same positions would have been abolished and the self-same employees would have been affected in the same manner as the result of the abolishment of these positions.

(g) We have also shown that even if your Honorable Board concluded that the provisions of Rule 3-C-1 of the Clerks' Rules and Working Conditions Agreement were not literally complied with it could not grant the monetary claim sought by the Brotherhood since to do so would necessitate writing a new and different rule not heretofore agreed to by the parties, a prerogative which it is well established your Honorable Board does not possess. See Awards 871, 1230, 2343, 2612, 2623, 3407, 4335, 4480, 4653, 4739, and 5079, this Division.

In view of the facts presented and the evidence set forth above, this claim should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: 1. It is conceded that a bulletin was not posted promptly following the abolishment of certain positions as is required by Rule 3-C-1, so it must be held that the Carrier violated that rule.

2. We have frequently held that this Board is without authority to require the Carrier to reestablish any position. See, for example, Award No. 4987 involving the same parties.

3. The Carrier contends that part 3 of the claim does not conform to the requirements of Rule 4-D-1 (a) governing “claims for compensation alleged to be due” to employees. It appears that the Organization has not identified any employee or class of employees alleged to be adversely affected herein although requested to do so by the Carrier. Accordingly this part of the claim does not conform to the requirements of that rule.

However, the Organization contends that such rule governs only time allowance claims under the service and pay provisions of Rule 4. The language used is susceptible of a broader interpretation and consideration of exception No. 2 to the rule is convincing that the parties intended the rule to apply to claims for compensation other than mere miscalculations of pay. That exception reads as follows:

“2. When a claim for compensation alleged to be due is based on an occurrence during a period employee was out of active service due to sickness, leave of absence, suspension or reduction in force it must be made, in writing, within ninety (90) days from the date the employee resumes duty.”

Claims based on occurrences while an employee is out of active service are not limited to nor even apt to be claims relating to miscalculation of payment for service rendered. They are more apt to be related to seniority or job rights.

Hence Part 3 of the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.

AWARD

Part 1 of the claim sustained.

Parts 2 and 3 of the claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1954.