

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

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

BROOKLYN EASTERN DISTRICT TERMINAL

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

1. The Carrier violated the Scope Rule and other provisions of the Clerks' Agreement when it made a private contract with L & A Markesano, to handle cement at Pidgeon Street Terminal, said contract covering the unloading and handling of cement as provided for in the Brooklyn Eastern District Terminal's Local and Proportional Freight Tariff, ICC No. 17, Page 8, Item 125, and
2. The work of checking, making reports and handling cement, shall be assigned to employes, as per seniority districts and in accord with the provisions of the Clerks' Agreement, and
3. The Carrier shall pay all affected employes, for each day unassigned or for the difference in rates of pay, based on the number of positions bulletined and required, starting on December 27th, 1954, and each day thereafter, until the violations are corrected.
4. The Carrier failed to deny this Claim, within sixty (60) days after it was filed. Therefore, the Claim is payable as stipulated in Article 5, Carrier's Proposal No. 7, of the August 21, 1954 Agreement.

EMPLOYES' STATEMENT OF FACTS: There is in effect a Rules Agreement dated April 1st 1938, with Amendments dated July 30th 1949, August 21, 1954 and July 7, 1955. The Rules Agreement will be considered a part of the Statement of Facts. Various Rules may be referred to from time to time without quoting in full.

This dispute involves two matters.

The claim is without merit and should be denied.

This claim has been completely handled with employees on this property.

OPINION OF BOARD: Claim here is for farming out work belonging to employees under the Clerks' Agreement and in addition to submitting the claim on its merits the organization asserts that it must be sustained as presented because of failure of carrier to deny the claim within sixty days after it was filed as required by Section 1(a), Article V of the August 21, 1954 Agreement.

Carrier, in response, denies any farming out of work, asserts that it did make timely denial of the claim and contends that the claim should not be sustained for the reason that it is vague, indefinite and uncertain and not made in behalf of any identifiable claimant.

The employees involved in the claim here submitted are neither named nor identified. Section 1(a) of Article V of August 21, 1954, relied on by petitioner also requires that all claims or grievances must be presented by or in behalf of the employee involved. Where there is no identifiable claimant in whose behalf the claim is made there is no proper claim before us upon which to act and the tendered claim should be dismissed.

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 Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934; and

The claim is not properly before this Division.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. SCHULTY
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1960.