

Award No. 9684
Docket No. CL-9424

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

1. Carrier violated the Clerks' Rules Agreement when, without agreement, it transferred work of calling train crews on the 4 P. M. to 12 Midnight shift at Savanna, Illinois from a position and employee in the Locomotive Department, Seniority District No. 56 to a position and employee in Operating Department, Seniority District No. 32.

2. Carrier shall compensate the occupant of the 4 P. M. to 12 Midnight Roundhouse Callers position in Seniority District No. 56 an additional two (2) hours at the overtime rate for each day the calling of train crews was transferred to District No. 32 from November 30, 1955 until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Early in November 1955 the Organization received information to the effect that the Carrier contemplated the transfer of the work of calling train crews on the 4 P. M. to 12 Midnight Shift from the Roundhouse caller position in Seniority District No. 56 to employees in the Yard Office in Seniority District No. 32.

On November 17, 1955, Vice General Chairman H. C. Hopper wrote Superintendent J. T. Hayes with respect to the matter as follows:

"Mr. J. T. Hayes, Supt.
CMStP&P R.R. Co.
Savanna, Illinois

Dear Sir:

I am advised that it is contemplated transferring the work in connection with calling train crews on the 4 P. M. to 12 Midnight

We should perhaps add here that the work of calling train crews during the second shift hours was returned to the 4 P. M. to 12 Midnight roundhouse caller in Seniority District No. 56 on March 16, 1956.

This claim, as will be noted, is in behalf of the occupant of the 4 P. M. to 12 Midnight Roundhouse Caller's position (Position No. 8) in the Locomotive Department Seniority District No. 56 at Savanna, Illinois.

Attached as Carrier's Exhibit "A" is a copy of letter written by Mr. C. P. Downing, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of December 1, 1954, designating the Carrier Officers to whom claims were to be presented and appealed under the provisions of Article V of the Agreement of August 21, 1954. There is also attached as Carrier's Exhibit "B" copy of Mr. Downing's letter of February 4, 1955 to Mr. Gilligan further outlining the Carrier Officers to whom time claims in behalf of employees in Seniority Districts 55, 56, 58 and 59 were to be presented and appealed. It will be noted that claims in behalf of employees occupying positions in Seniority District 56 were to be presented in the first instance to the respective Division or District Master Mechanic or Shop Superintendent and that the respective Division Master Mechanic for employees in Seniority District 56 on the D&I Division, which includes Savannah, Illinois, was the Division Master Mechanic located at Savannah, Illinois.

POSITION OF CARRIER: The above-quoted claim, which is in behalf of an employee occupying a position in Seniority District No. 56, which is now before your Honorable Board was never presented to the Division Master Mechanic at Savannah, Illinois.

It is the Carrier's position, therefore, that the claim is barred under the provisions of Article V of the Agreement of August 21, 1954.

We respectfully request that the claim be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Each party in this case urges strict application of some part of Section 1 (a), Article V, of the August 21, 1954 National Agreement. This Section provides:

"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

The Carrier urges that the present claim must be rejected since the Organization failed to comply with the first sentence of the above-quoted provision in failing to file the claim with the officer of the Carrier authorized to receive same. The Organization urges that the Carrier failed to comply

strictly with the second sentence of said provision and that the claim accordingly must be sustained.

By written notice of February 4, 1955, the Carrier made it absolutely clear that as to employees in Seniority District No. 56 the "Master Mechanic" was the officer authorized to receive claims or grievances in the first instance for the purpose of applying the above-quoted provision of Article V of the National Agreement. The claim herein was filed with Division Superintendent Hays on January 24, 1956; the claim never was presented to the Master Mechanic. The mere fact that the Division Superintendent ordered the change in operational procedure which is objected to herein did not have the effect of arbitrarily making him the officer of the Carrier authorized to receive the claim as opposed to the Master Mechanic who had been specifically designated for the purposes of Article V, for to hold otherwise would seriously undermine the effective working of said Article. Nor does the Record indicate any adequate basis for finding a waiver by the Carrier of the requirement that Seniority District No. 56 claims or grievances be filed in the first instance with the Master Mechanic. Since the claim was not properly filed in the first instance we do not reach the question of whether the second sentence of the above-quoted provision was complied with, nor do we reach the merits of the dispute. The claim must 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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That for reasons stated in Opinion the claim must be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Shulty
Executive Secretary

Dated at Chicago, Illinois this 7th day of December, 1960.