

Award No. 9764
Docket No. CL-9498

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph E. Fleming, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY**

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

(1) The Carrier violated the clerical Agreement when on January 1, 1956, they transferred work each day five (5) days per week from Seniority District #3, Travel Center Office, La Salle Street Station, Chicago, Illinois, to Seniority District #1(b), Auditor Passenger Traffic Office located at Hamilton Park, Chicago, Illinois;

(2) The Carrier be directed by appropriate order to return and retain the work in question to employees in Seniority District #3, Travel Center Office, La Salle Street Station, Chicago, Illinois;

(3) That effective January 1, 1956, and until the violation has been corrected, L. B. Benson be paid four (4) hours at punitive rate at \$378.84 per month each day, five (5) days per week; and that W. J. O'Brien be paid four (4) hours at punitive rate at \$368.56 per month each day five days per week. (Add to these rates the general increase of November 1, 1956, of \$17.40 per month.)

EMPLOYEES' STATEMENT OF FACTS: Effective January 1, 1956, Carrier transferred clerical work of preparing daily interline and local ticket reports, as well as weekly and monthly reports from Seniority District #3 to Seniority District #1(b).

February 9, 1956, W. J. O'Brien filed the following claim with J. D. Florence, Manager Travel Center, La Salle Street Station, Chicago, Illinois:

"Effective January 1, 1956, the Carrier violated the Clerks' Agreement when they arranged to transfer work of posting local and interline tickets each day as well as completing weekly and monthly reports from the Travel Center office and seniority district to the office of Auditor Passenger Traffic, another seniority district.

"Prior to January 1, 1956, part of my assignment was to perform the above work and I hereby file claim for four (4) hours at time and one-half, each day as a continued claim five (5) days each week until the violation has been discontinued.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

OPINION OF BOARD: Prior to May 1, 1955 the New York Central and this Carrier had maintained a joint ticket office in the La Salle Street Station, Chicago, Illinois. The two roads on that date established separate ticket offices. The Rock Island Railroad also abolished their city ticket office at 175 West Jackson Boulevard, Chicago, Illinois and the Reservation Bureau located on the 7th floor of the La Salle Street Station and consolidated these three seniority districts into one seniority district in the Travel Center in the La Salle Street Station. Employees at the Travel Center prepared daily, weekly, and monthly interline and local ticket reports. Carrier and the Organization held conferences concerning the transfer of this work to the Passenger Traffic Accounting Office at Hamilton Park but never reached an agreement.

On January 1, 1956 this work was transferred to the Passenger Traffic Accounting Office at Hamilton Park and as a result became the subject of this claim.

In this case there is no doubt from the record and Carrier admits that employees of Seniority District #1(b), Auditor Passenger Traffic Office, Hamilton Park, Chicago, are performing work coming under the jurisdiction of Seniority District #3. This is a violation of the Agreement and the claim should be allowed.

Some awards have held that where work is not performed the punitive rate is not applicable and therefore this claim will be allowed at the pro rata rate.

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 Carrier violated the Agreement.

AWARD

Claim allowed at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1960.

DISSENT TO AWARD NUMBER 9764, DOCKET NUMBER CL-9498

The same cause of action between the same parties, with insignificant differences as to details, such as locations and nature of work, was decided by our Award 8230. The same rules were involved and that Award decided the rights thereunder of the respective parties in circumstances such as those involved here.

Award 8230 held that, "Carrier clearly had the right to do what it did here * * *" and "* * *" that Organization has failed to prove Carrier violated the Agreement." Award 8230 is final and binding upon both parties under Section 3, First (m) of the Railway Labor Act and it was before us when Award 9764 was made.

Award 8230 has not been found to be palpably wrong. It should have been followed in this case. Award 9764 is erroneous. (See Awards 8104 and 7969, among others.)

For the foregoing reasons, we dissent.

/s/ J. F. Mullen
 /s/ R. A. Carroll
 /s/ P. C. Carter
 /s/ W. H. Castle
 /s/ D. S. Dugan

**LABOR MEMBERS' REPLY TO CARRIER MEMBER'S DISSENT
TO AWARD NO. 9764, DOCKET NO. CL-9498**

A review of Award 8230 shows that it is predicated on Rule 31 while the instant dispute is based on Rule 5. It is clear that the Referee in Award 8230 was confused as to pertinent issues there involved and feebly attempted to differentiate the situation from previous awards that had sustained claims under similar circumstances. He failed to follow the doctrine of stare decisis so well explained by Referee Garrison in his Memorandum to Award 1680. It is so palpably wrong that it should not be followed in view of the many awards that have held contrary thereto. Awards that have sustained similar claims as that confronting us here are: Awards 99, 198, 199, 610, 612, 752, 753, 973, 975, 1403, 1611, 1612, 1642, 1685, 1711, 1808, 2050, 2354, 2585, 3656, 3964, 4076, 4534, 4653, 4667, 4987, 5091, 5396, 5413, 5731, 6021, 6309, 6357, 9193, and 9419. Also, see my Answer to Carrier Members' Dissent to Award 9419.

In view of this long line of Awards sustaining claims on similar situations, I agree that the doctrine of stare decisis should have been followed here as enunciated in Award 1680 (Memorandum) supra, and Award 8104. However, Award 7969 has no application to the involved issue, nor the doctrine of stare decisis.

The Dissenters have not given us any reason why the majority should have followed a Maverick instead of the herd.

/s/ J. B. Haines
 J. B. Haines
 Labor Member