

Award No. 10769

Docket No. CL-10015

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert J. Ables, Referee

PARTIES TO DISPUTE:

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

CHICAGO GREAT WESTERN RAILWAY COMPANY

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

(1) That the Carrier violated the agreement with the Brotherhood effective August 15, 1939, reprinted May 1, 1955, when on Saturday and Sunday, February 25 and 26, 1956, and on all subsequent Saturdays and Sundays, it reduced the rate of pay of the position of Relief Clerk "A" which relieves the incumbent of position of Warehouse Foreman-Yard Clerk, Council Bluffs, Iowa; and

(2) That the Carrier shall now be required to compensate Wm. J. Besore and/or his successor, incumbent of the position of Relief Clerk "A", for the difference in rate of pay which is being paid while relieving the position on Saturday and Sunday (\$15.74 per day) and that which he should have earned while relieving the position of Warehouse Foreman-Yard Clerk (\$16.02 per day), a difference of 28¢ per day beginning Saturday and Sunday, February 25 and 26, 1956, and similar payment for all subsequent Saturdays and Sundays until this violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Under date of April 29, 1953, Circular No. 67 reestablished among others, two positions at Council Bluffs, Iowa, i.e., Warehouse Foreman, assigned hours 3:00 P. M. to 11:00 P. M., rate \$14.62 per day, rest days of Tuesdays and Wednesdays; and Relief Clerk "A", which had, as a part of its assignment, relieving the Warehouse Foreman's position 3:00 P. M. to 11:00 P. M., Tuesdays and Wednesdays, rate \$14.62 per day. Circular No. 67, Sheet #3, advertising these two positions, among others, is attached hereto and made a part hereof, identified as Employees' Exhibit A.

The position of Warehouse Foreman had assigned work days of Thursday, Friday, Saturday, Sunday and Monday at the \$14.62 per day rate.

Circular No. 159 was issued on November 13, 1953, abolishing certain positions, and establishing, effective November 21, 1953, two positions among others, i.e., Yard Clerk-Warehouse Foreman position, rate \$14.86 per day, assigned hours 7:00 A. M. to 3:00 P. M., rest days Saturdays and Sundays;

"All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven-day service or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under this agreement."

However, it may be noted that the rule literally provides for such assignments. As pointed out in Agent Dippel's letter May 24, 1956 (quoted in Carrier's Statement of Facts), "Relief assignment 'A', which is occupied by Clerk Besore, was established by Circular #159, Nov. 13, 1953, pursuant to first paragraph Section 2(e), Rule 27, of the Clerks' Agreement, i.e., to perform relief work on certain days (Monday-Tuesday-Wednesday) and such types of other work (first shift yard clerk on Saturday and Sunday) as may be assigned under the agreement, for which he is compensated at the established rate of position relieved on Monday, Tuesday and Wednesday, and of the first shift yard clerk on Saturday and Sunday."

Incumbent of Relief "A" does not relieve the yard clerk-warehouse foreman on Saturday and Sunday as alleged by the Employees for that reason that (1), position of yard clerk-warehouse foreman is a five-day position; and (2), Carrier's warehouse is closed on Saturday and Sunday and the duties of that position upon which claim for higher rate of pay is based are not required.

In view of the foregoing, it is abundantly clear that claim is without merit and must be denied.

Carrier affirms that all data in support of its position has been presented to the other party and made a part of the particular question in dispute.

OPINION OF BOARD: This claim is based on the Employees' contention that the Carrier violated the Clerks' Agreement when it abolished certain positions on November 13, 1953 and established Relief Position "A", among others, on November 21, 1953, at a lower rate than the position relieved, i.e., the "Yard Clerk-Warehouse Foreman" position. The claim is for the difference between the rate of pay of Yard Clerk and that of Yard Clerk-Warehouse Foreman on Saturdays and Sundays since February 25, 1956 until the violation is corrected.

The primary position of the Carrier is that the claim is defective and therefore should be dismissed because a conference was not held on the property prior to submission of the claim to this Board. If this contention has merit we do not reach the substance of the dispute.

In Award 10675 we reviewed the landmark cases and statutory authority and held that failure to confer before submitting a claim is not fatal to jurisdiction in this Board to decide the issue on the merits. In that case we said:

"Whether the Board will consider a claim depends on its administrative judgment that the claim has been progressed on the property in the usual manner, as provided in Section 3, First (i) of the act. In construing the term 'usual manner,' however, it must be recognized that it does not at all times and all conditions require that a conference actually be held on the property. So long as common, accepted, ordinary procedures were observed on the property, including the opportunity for a conference, the Board may conclude that the claim was handled in the usual manner and proceed to consider the claim presented to it."

In the exercise of our administrative discretion in the dispute before us we conclude that the Carrier did not have an opportunity to request a conference before the claim was submitted to the Board and find accordingly, that the claim should be dismissed.

Clearly, the claim was not handled on the property in the usual manner, as required under Section 3, First (i) of the Railway Labor Act. On October 18, 1956 the highest designated officer of the Carrier denied the claim. Under the applicable time limit rule the Employees had nine months, or until July 18, 1957, to protect their claim by filing with this Board a request for adjustment of the dispute. Within this nine month period, however, the "usual manner" for handling a dispute includes a conference of the parties, or as we have shown, a reasonable opportunity to request such a conference. Such a conference was not held, nor was there a reasonable opportunity for the Carrier to request one. On December 21, 1956 the General Chairman wrote the highest designated officer that:

"... it is our desire to dispose of this claim in the Joint Disputes Movement which resulted in the spreading of the strike ballot dated January 30, 1956."

Of approximately 80 claims and grievances listed by the Clerks' Organization on the original docket of the "Joint Disputes Movement," about 50 were disposed of following a series of conferences between the parties. The claim before this Board was not one of them. In view of the General Chairman's letter of December 21, 1956, the Carrier rightly assumed that this claim would be discussed in conference. There is no evidence in the record of further discussion about the handling of the dispute after the General Chairman's letter. Since the Employees filed this claim with the Board less than a week before the expiration of the nine month period, the Carrier had no reasonable opportunity to request a conference. Accordingly, the claim was not handled on the property in the usual manner and should be dismissed for failure to satisfy the Board's Rules of Procedures enunciated in Circular No. 1 that:

"No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934."

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; and

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

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1962.