

Award No. 10971

Docket No. CL-10799

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ralph D. McMillen, Referee

PARTIES TO DISPUTE:

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

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

1. That Carrier violated the provisions of Rule 1 under Group 3, paragraph (a), page 6 of the current agreement, effective June 1, 1953 when it required or permitted, and continues to require or permit operators of vehicles (truck or other conveyances) and his helpers (all employes of the Burlington Truck Lines, Inc.) who hold no seniority rights under the Clerks' Agreement with the railroad, to come into the railroad freight warehouse at Des Moines, Iowa and perform clerical work, such as checking, receiving and delivering freight and the work of handling (trucking) freight into the freight warehouse (beyond the tail-gate of the vehicle) and, loading their lading from the floor of the warehouse without regard to the restricted area set forth in the agreement that they may load from.

2. That J. E. Morgan, Jr., Stowman, qualified to perform the work of checking freight, be compensated for wage loss sustained, difference between Stowman's rate \$2.07 per hour and Check Clerk's rate, \$17.11 per day, for each day of the violation beginning November 11, 1957 and each day the violation is continued or resumed.

3. That L. M. Saltzman, furloughed Stowman, qualified to handle freight (trucking from and to the vehicles inside the warehouse) be compensated eight (8) hours per day at Stowman's rate of pay \$2.07 per hour, each day of the violation beginning November 11, 1957 and each day the violation is continued or resumed.

EMPLOYEES' STATEMENT OF FACTS: (a) Prior to January, 1956 Carrier leased a designated portion, approximately 100 feet in length, of its railroad warehouse at Des Moines, Iowa, to its subsidiary, the Bur-

All data herein and herewith submitted have previously been submitted to the Employees.

* * * * *

(Exhibits not reproduced.)

OPINION OF BOARD: This claim was filed by Claimants J. E. Morgan, Jr. and L. M. Saltzman on November 18, 1957 and denied by the highest designated officer of the Carrier's on February 11, 1958 because it is barred by the provisions of the August 21, 1954 Agreement, under Section 1 (c) of Article V.

On February 7, 1957, the following claim, which had been handled with lower Carrier officers and was appealed to Carrier's highest officer.

"Herewith claim of the System Committee of the Brotherhood in favor of J. E. Morgan, Jr., J. E. Morgan, Sr., Mace Piatt, L. M. Saltzman, H. H. Janes and Charles Benson, Local Freight House employees, Des Moines, Iowa for a minimum pay of three hours for November 12, 1956 and each succeeding work day thereafter until the violation is corrected, account Burlington Truck Line employees are performing work of loading and unloading freight at all places within the freight house."

This claim was declined by the Carrier's highest officer in a letter dated April 4, 1957. On December 10, 1957 the Organization withdrew this claim.

"We have been unable to develop all the facts on this claim that would enable us to present a clear cut case to the Third Division of the National Railroad Adjustment Board. Therefore, we are withdrawing the claim referred to above without prejudice to our position. . . ."

The Organization had until January 3, 1958 to file notice of intention to file a submission with the Board, under the time limit on claims Agreement and another 30 days thereafter to file the submission.

This Board finds that the original claims presented a basis of complaint and the denial of them is controlling. A refiling of these claims does not give rise to a new proceeding.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 claim is barred by terms of Time Limit Rule.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1962.