

Award No. 11580
Docket No. CL-11556

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

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

(1) Carrier violated the schedule for clerks when on May 3, 1958 it abolished position of Bill Clerk at Milan, Michigan in the rearrangement of clerical work assigned certain duties heretofore handled exclusively by clerical workers to the Agent, a position without the Scope rule of our agreement.

(2) That the clerical work be returned to the clerical workers and until this is done S. E. Dennison, Car Clerk who was displaced in the exercise of seniority rights by C. H. Heinzman and A. T. Hallock, who was displaced by Dennison be compensated for wage loss sustained retroactive to May 3, 1958.

NOTE: The monetary wage loss of Dennison and Hallock to be determined by joint check of payrolls and other necessary records.

EMPLOYES' STATEMENT OF FACTS: Prior to May 3, 1958, the Station force at Milan, Michigan was as follows:

Position	Rate of Pay	Occupant	Hours Assigned	Days	Relief
Agent			7:00 A.M. 4:00 P.M.	6	
Cashier	17.24	O. R. Stoops	7:00 A.M. 4:00 P.M.	5	None
Car Clerk	17.08	S. E. Dennison	6:00 A.M. 3:00 P.M.	7	Sun. & Mon.
Bill Clerk	16.60	C. H. Heinzman	3:00 P.M. 12 mid.	7	Tues. & Wed.

In addition to the foregoing, there are three telegrapher-levermen providing around-the-clock service at the tower.

(Exhibits not reproduced.)

OPINION OF BOARD: To arrive at a proper disposition in the instant matter, it is necessary that we consider the following pertinent facts:

On June 4, 1958, the Superintendent received the following communication addressed to him by the Local Chairman.

“Primrose Lodge No. 423

“Montpelier, Ohio, June 2, 1958

“Mr. F. C. Flynn, Superintendent,
Wabash Railroad Company,
Montpelier, Ohio

“Dear Sir:

“Referring to conference May 26, 1958 regarding the Agent at Milan, Michigan performing clerical work.

“On May 2nd 1958 the position of Bill Clerk was abolished and the hours of assignment of the Cashier and the Car Clerk were changed to cover period from 6 A. M. to 12 Midnight, daily.

“The position of Agent at Milan is reported as an Exclusive Agent and as such we understand his duties are not to include clerical work coming under the Schedule for Clerks.

“On May 2nd 1958 the Agent at Milan issued a letter to the Cashier and Car Clerk that he would perform certain clerical work that had previously been performed by the clerical force prior to the abolishment of the Bill Clerk position. Clerical work being performed by the Agent consists of the following: making interchange reports, working local waybills, demurrage, releasing cars, working connections to and from the Ann Arbor, checking local industries, making lists for local trains, etc.

“We respectfully request that the Agent at Milan be instructed to discontinue performing work coming under the scope of the Schedule for Clerks, and that the clerks affected by the abolishment of the position of Bill Clerk be reimbursed for any monetary loss subsequent to May 2nd 1958, as the work was not abolished but, as stated above is being performed by the Agent. (Emphasis ours.)

“Please advise.

“Yours truly,

“/s/ W. J. Smith
Local Chairman.”

There was a response to this letter by the Superintendent on July 24, 1958, wherein he denies the requests of the Local Chairman.

On August 19, 1958, a communication was addressed to the Assistant General Manager by the General Chairman setting forth the alleged violation of

the Agreement by the Carrier and specifically naming certain individuals to be reimbursed.

On September 14, 1958, and prior to the time that any answer had been received by the Petitioner from the communication addressed to the Carrier on August 19, 1958, the Petitioner served Carrier with a formal written notice in compliance with Section 6 of the Railway Labor Act proposing changes in Article V of the Agreement of August 21, 1954, including the following:

" * * * The presentation of the substance of the claim or grievance shall be sufficient without identification of the employe or employes involved, and every claim or grievance presented as required by this paragraph shall be handled under this rule on behalf of all employes adversely affected. * * * "

On September 18, 1958, a letter was written declining the claim of the Petitioner, the Carrier contending that the first presentation of a claim in behalf of named individuals or employes was on August 19, 1958, and was not received within 60 days from the date of the occurrence of the event on which the claim was based as required by Article V, Section 1 (a) of the Agreement dated August 21, 1954. Carrier also denied the claim on the merits.

It is quite apparent from a reading of the first communication addressed to the Carrier by the Petitioner, dated June 2, 1958, that it neither names the employes on whose behalf the claim is made, nor can they be easily identified, so as to bring it within the purview of Article V, Section 1 (a) of the 1954 Agreement which provides in part:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe involved to the officer of the carrier authorized to receive the same . . ."

The letter was clearly designated as a request and did not refer to any named individual. Prior to the General Chairman's letter of August 19, 1958, more than one hundred days after the occurrence of the event out of which the claim arose, no claim was submitted by or in behalf of any individual employe.

Section 1 (a) of Article V does not permit the initiation or progression of claims for unnamed individuals for unspecified dates.

The request on September 14, 1958, by the Petitioner for the change of the Rule, as hereinbefore set forth, is an implied admission that the 1954 Agreement did not permit the practice requested in the change.

Under all the facts and circumstances of this case, we must conclude that no valid claim was presented to the Carrier until August 19, 1958, more than 100 days after May 2, 1958, the date of the occurrence which gave rise to the claim, and the claim not having been presented by the Petitioner in behalf of the employe within 60 days from the date of the occurrence on which the claim is based, the claim is barred and the Board is without jurisdiction to hear the same.

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 does not have 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 28th day of June 1963.