

Award No. 12739
Docket No. CL-11846

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAIL ROAD COMPANY

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

1. The Carrier violated the provisions of the Clerks' Agreement, specifically the Scope Rule, when it created two new Clerical positions at Ronkonkoma and Huntington ticket offices, at the rate of \$439.38, per month, and gave the positions the title of Assistant Agents and assigned the work outside the clerical forces.
2. The Carrier shall bulletin and award these Clerical positions to the Clerical employees as stipulated in the Rules Agreement and compensate the successful applicants for any wage losses sustained.

EMPLOYEES' STATEMENT OF FACTS: There is in effect Rules Agreements effective July 1, 1945 and the National Agreement signed at Chicago, Ill., August 21, 1954, covering Clerical, other office, station and storehouse employees between this Carrier and this Brotherhood. The Rules Agreements must be considered a part of this statement of facts. Various rules and memorandums therefore may be referred to from time to time without quoting in full.

This dispute involves the question of whether or not the Carrier complied with the meaning and intent of the Rules Agreement when it re-established two clerical positions at Ronkonkoma and Huntington ticket offices and arbitrarily gave the positions the title of Assistant Agents and assigned the work outside the Clerical forces.

Prior to January 11, 1959, and in accordance with the effective date of the Clerks' Agreement July 1, 1945 there were in effect established Clerical positions at Ronkonkoma and Huntington stations.

The duties assigned to these positions are primarily clerical and as a result of this Carrier's unilateral action in excluding these positions from being bulletined to the Clerks, claims were filed and progressed by means of correspondence which are shown in exhibit numbers one (1) to six (6), inclusive.

OPINION OF BOARD: The Carrier made timely objection on the property to this claim on grounds that Paragraph 2 thereof demands payment of any wage losses sustained by unnamed employees who might later become the successful applicants for the two clerical positions sought to be bulletined and awarded. This constitutes, says Carrier, a clear violation of Section 1 (a) of Article V of the August 21, 1954, National Agreement, reading, in pertinent part, as follows:

“(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, . . .”

The words “employe involved” have been held to mean that he need not be named but must be so described as to be readily identifiable. (Award 11038).

Here the Petitioner asserts:

“. . . If this Honorable Board sustains our claim, after the positions are properly bulletined, the senior employees having sufficient fitness and ability will be awarded the positions and this could properly determine the employees who had sustained the losses.”

But what Petitioner fails to acknowledge is that such employees are not “readily identifiable” because to ascertain their identity the Carrier could not only be required to bulletin the jobs and award the work, it would necessarily have to determine the relative fitness and ability of each employee according to his seniority standing, and availability. Such decisions by the Carrier not only could require it to search its own records, they could very well lead to the filing of additional claims by those not found qualified. That the Board will not require a Carrier to so assist those asserting a claim against it is well established. (Awards 11776, 11156, 10435, 9343). Nor is it proper for this Board knowingly to render findings the result of which may be to encourage controversy and disputes. As we said in Award 11038 (*supra*), “. . . the description of the employee involved ought not to give rise to a further dispute as to his identity.”

In view of the foregoing, the Board will dismiss this claim for failure to meet the requirements of Article V, 1 (a) of the August 21, 1954, National Agreement.

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 have jurisdiction over the dispute involved herein, and

That the claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of July 1964.

LABOR MEMBER'S DISSENT TO AWARD 12739
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The Referee grossly erred when he dismissed this claim on an unnamed claimant basis.

Had the Carrier been required to bulletin and award these positions as provided in the existing rules agreement the applicants Carrier assigned thereto would have been the claimants and their names would have been on their application for such positions.

The claim should have been decided by the Referee on its merits.

C. E. Kief
Labor Member