

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

WESTERN WEIGHING AND INSPECTION BUREAU

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5037) that:

(a) The Bureau violated the Rules of the Schedule Agreement when the Bureau Agent at Galveston, Texas, abolished three positions without giving 48 hours advance notice.

(b) The Bureau shall now compensate regularly assigned Grain Door employees I. S. Wright, L. Tubbs and T. Daniel, eight hours' pay each at their respective rates for October 26, 1960.

EMPLOYEES' STATEMENT OF FACTS: Employees' Exhibit No. 1 outlines the position that was assigned to Mr. I. S. Wright one of the claimants and the bulletins covering the other two claimants Messrs. Tubbs and Daniels would be similar to Employees' Exhibit No. 1, except the title would be just "serviceman" and the rate of pay would be six cents less per hour.

Employees' Exhibits 2, 3 and 4 covering bulletins issued by Agent J. H. Burnam dated October 24, 1960, for the purpose of abolishing positions 3-A, 107 and 108 at the close of business Tuesday, October 25, 1960. Copies of these bulletins were received in the General Chairman's office October 28, 1960.

Employees' Exhibits No. 5 and 6 covers corrected bulletins issued by Agent J. H. Burnam covering only positions 107 and 108 indicating the abolishment notices should have been dated October 24, 1960, at 8:00 A. M. and the positions were to be abolished at 8:00 A. M., Wednesday, October 26, 1960. These reported corrected bulletins were received in the General Chairman's office November 7, 1960, along with notices dated November 3, 1960, reinstating positions No. 103, 104 and 105.

During an investigation at Galveston, Texas, Thursday, November 10, 1960, the following information was developed which we shall quote in part:

Again on April 18, 1957, Manager Piehl found it necessary to write General Chairman Bell, reminding him of previous conferences with him and informing him that he was presenting claims direct to some of the Grain Door Foremen rather than handling such claims first through the District Manager, and Manager Piehl protested this procedure (See Bureau's Exhibit 6).

Now as to the claim at hand, the General Chairman has again disregarded all previous instructions issued by this Bureau as well as agreed upon procedures for the handling of claims or grievances either by himself or his duly accredited representatives by filing the instant claim direct with the Local Agent, Mr. J. H. Burnam, at Galveston, Texas, who is not the District Manager delegated by the Bureau to receive claims and grievances from either Mr. Bell or his duly accredited representatives (See Bureau's Exhibit 7). Mr. Bell's letter filing claim with Local Agent J. H. Burnam was acknowledged by him under date of November 16, 1960 (See Bureau's Exhibit 8).

Under date of December 7, 1960, Local Agent Burnam again wrote General Chairman Bell supplementing his previous letter of November 16, 1960, declining the claim as being without merit (See Bureau's Exhibit 9).

Under date of December 12, 1960, the General Chairman then appealed the claim to District Manager B. E. Richardson who is the party who should have received the initial claim from the General Chairman (See Bureau's Exhibit 10).

Under date of December 19, 1960, District Manager B. E. Richardson replied to the General Chairman informing him that in his opinion the three involved employees were given the required time under the Rules Agreement before their positions were abolished (See Bureau's Exhibit 11).

The claim was then appealed to Assistant Manager R. C. Kniewel by the General Chairman with his letter of January 5, 1961 (See Bureau's Exhibit 12).

This, in turn, was answered by Assistant Manager Kniewel in his letter of February 1, 1961, declining the General Chairman's appeal, further stating that the claim as filed does not represent the true facts of the situation and advising the General Chairman that he may wish to discuss this in conference and, if so, to kindly advise and we would arrange to hold the time limits in abeyance (See Bureau's Exhibit 13).

On March 15, 1961, General Chairman Bell replied to Assistant Manager Kniewel's letter of February 1, 1961 (See Bureau's Exhibit 14).

The Bureau wishes to state that all three employees involved were verbally given forty-eight hours advance notice prior to the time their positions were abolished and admits that the original bulletins concerning these abolishments as posted by Local Agent Burnam were in error and that the corrected bulletins were not posted forty-eight hours in advance of abolishing the positions.

However, when claimant I. S. Wright was informed by Local Agent Burnam that his position was to be abolished he then exercised his displacement rights on Position 106 occupied by a junior employee, to become effective October 27, 1960, since he requested and received permission from Agent Burnam to be absent from duty on October 26, 1960, since his automobile needed radiator repairs and he wished to take this day off to make said repairs.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier moves for dismissal on the ground that the claim was not filed with "the officer of the Carrier authorized to receive

same." This the record supports. But, within the 60 days "from the date of the occurrence on which the claim or grievance is based" the claim came into the hands of that officer and thereafter was handled in the usual manner on the property. This we hold satisfies the filing requirement and time limitation prescribed in Section 1 (a) of Article V of the August 21, 1954 Agreement. The motion is denied.

We take this occasion to emphasize that Carrier has the absolute right to designate its representative with whom claims shall be filed. If an organization fails to file a claim with Carrier's duly designated representative within the time limits prescribed we are compelled, by agreement of the parties, to dismiss.

As to the merits, Carrier admits that Claimants were not given 48 hours notice of abolishment of their positions as required by Rule 12 of the basic agreement, as amended. Ergo, Carrier violated the agreement. We will sustain the claim.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of June 1966.