

Award No. 14826
Docket No. CL-13630

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

THE CINCINNATI UNION TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5207) that:

(1) Carrier violated the terms of the current Clerks' Agreement when on March 22, 1961 it abolished three Yardmaster Clerk positions in Cabin H and two Relief Yardmaster Clerk positions in Cabins H and U, the incumbents of which held point seniority on Point Roster No. 2, and concurrently therewith unilaterally moved the work attached thereto from Point Roster No. 2 to Point Roster No. 4.

(2) That E. J. Penderghast be paid for each Saturday worked at the time and one-half rate of Yardmaster Clerk, beginning with July 1, 1961.

That A. B. Childers be paid for each Tuesday and Wednesday worked at time and one-half rate of Yardmaster Clerk, beginning with June 27 and 28, 1961.

That John Connelly be paid for each Thursday and Friday worked at time and one-half rate of Yardmaster Clerk, beginning with June 15 and 16, 1961.

That W. H. Ballinger be paid for the difference in rate of pay between the position of Yardmaster Clerk (\$2.53 per hour) and that of Station Attendant (\$2.326 per hour), commencing June 14, 1961.

EMPLOYES' STATEMENT OF FACTS: Under date of March 9, 1961, Trainmaster E. J. Volle of the Cincinnati Union Terminal Company addressed the following communication to Division Chairman E. E. Manning of the Clerks' Organization:

"In the very near future we contemplate the closing of the coach yard entirely. At that time it is our intention to have the engine dispatcher take over the duties of calling yard crews now being performed by clerks at Cabin H, and to abolish the jobs at Cabin H entirely.

OPINION OF BOARD: This claim arose when Carrier abolished three Yardmaster Clerk positions in Cabin H and two Relief Yardmaster Clerk positions in Cabins H and U and transferred the work performed by these employees who held seniority on Point Roster No. 2 to three Engine Dispatcher clerks on Point Roster No. 4. The positions of Engine Dispatchers were then abolished and new positions entitled Crew Dispatchers were created to handle the work.

Petitioners John Connelly, E. J. Penderghast, A. B. Childers, and William H. Ballinger filed claims on June 14, June 27, June 26, and June 14, respectively. They contend that Carrier violated the Agreement by unilaterally removing work from Point Roster No. 2 and intermingling it with work from Point Roster No. 4 through the establishment of new positions.

Carrier denies the claims with the assertion that they were not supported by any rules of the Agreement and also requests that the claims be barred for failure of Petitioners to file the claims within the sixty-day time limit provided in Section 1(a) of the National Time Limit Claims Rule on Claims.

Petitioners maintain that the claims were for a continuing violation of the Agreement and therefore can be filed at any time under Section 3 of the National Time Limit on Claims Rule.

Although the Petitioners argue that the claims are continuing in nature, their Statement of Claim clearly indicates that their claims are based on occurrences of March 22, 1961, the date when Carrier abolished the five Yardmaster Clerk positions and moved the work to another Roster. Since the actions complained of occurred on March 22, 1961, and are confined to that date by Petitioners, we find that the claims are not continuing claims.

To comply with the sixty-day time limit prescribed in Section 1(a) of the National Time Limit on Claims Rule, the claims would have to be filed on or before May 21, 1961. Since all of the claims were presented in June of 1961, they were filed after the sixty-day expiration date. The claims, therefore, are dismissed.

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;

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

Claim are dismissed in accordance with above Opinion.

AWARD

Claims are dismissed in accordance with above Opinion and Findings.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 11th day of October 1966.

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