

Award No. 15801
Docket No. CL-16064

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

THE BELT RAILWAY COMPANY OF CHICAGO

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5885) that:

1. The Carrier violated the Clerks' Agreement when it utilized the services of outsiders having no previous employment relationship or seniority, on an extra basis to relieve temporary vacancies and/or positions pending assignment by bulletin, rest day work and such extra work as may occur.

2. That employes with established seniority rights, who were available, willing, able and qualified to perform the work in question, be allowed a day's pay, at the applicable overtime rate of the position and/or work involved effective with the period here involved, namely, March 28, 1964 to and including July 31, 1964 and continuing thereafter until corrective measures are applied.

3. The names of Claimants, dates on which the violation occurred, the rates of pay involved, vacancy and/or work involved and the names of the outsiders used for the performance of the work in question have been furnished to the Carrier at all stages of handling, and are attached hereto as Appendix A.

4. That the employes' claim as set forth in Sections 1 and 2 hereof was presented to the Carrier's Manager-Labor Relations, Mr. J. C. Sidor, on September 30, 1964, and has to date neither been allowed nor denied, and as a consequence thereof, the Carrier did not meet its obligations as set forth in Section (a) of Article V of the August 21, 1954 Agreement and, therefore, the claim as presented must be allowed and its liability under that Article must continue until such time as it corrects its dereliction.

APPENDIX A

[Names of Claimants and Rates not reproduced.]

EMPLOYEES' STATEMENT OF FACTS: The Carrier performs switching and transfer service in the Chicago Switching District with line haul

GROUP NO. 4

EMPLOYES' FILE NO. CS-3

The claims are for dates beginning August 3rd and ending September 28, 1964, originally presented to Agent Santoro October 3, 1964, properly denied by Mr. Santoro October 27, 1964, appealed to Superintendent Turner December 19, 1964, appealed to Manager-Labor Relations Sidor February 6, 1965, and denied by Mr. Sidor March 22, 1965.

GROUP NO. 5

EMPLOYES' FILE NO. CS-6

These claims are for dates beginning February 15, 1965 and ending April 11, 1965, originally presented to Agent Santoro April 12, 1965, properly denied by him April 29, 1965, appealed to Superintendent Turner May 5, 1965, denied by Mr. Turner May 10, 1965, appealed to Manager-Labor Relations Sidor June 22, 1965, and denied by Mr. Sidor July 28, 1965.

GROUP NO. 6

EMPLOYES' FILE NO. CS-9

These claims are for dates beginning April 22, 1965 and ending with May 19, 1965, originally presented to Agent Santoro June 13, 1965, properly denied by him June 24, 1965, appealed to Superintendent Turner July 14, 1965, denied by him July 16, 1965, appealed to Manager-Labor Relations Sidor August 2, 1965, and denied by him September 30, 1965.

GROUP NO. 7

EMPLOYES' FILES CS-13, CS-17 AND CS-18

CS-13 originally presented to Agent Santoro July 2, 1965 and denied by him September 13, 1965.

CS-17 originally presented to Agent Santoro August 26, 1965 and denied by him September 14, 1965.

CS-18 originally presented to Agent Santoro September 15, 1965 and denied by him September 21, 1965.

Appealed (CS-13, CS-17 and CS-18) to Superintendent Turner September 27, 1965 and denied by him October 5, 1965. Appealed to Manager-Labor Relations Sidor November 22, 1965 and denied by him January 18, 1966.

Carrier asserts all claims (Groups 1 through 7) have no merit on alleged violation of Article 5 of the August 21, 1954 Agreement or any other basis. They should be denied.

OPINION OF BOARD: With the exception noted below, Brotherhood presented the substance of paragraphs 1, 2 and 3 (including Appendix A) on appeal to Carrier's Manager-Labor Relations in a letter dated September 30, 1964. There is no evidence in the record that Carrier's Manager-Labor Relations wrote a denial letter prior to his letter of March 22, 1965, denying these and other claims. In a letter dated January 27, 1965, the General Chairman claimed to Carrier that since more than sixty days had passed after the appeal in the Brotherhood's September 30, 1964 letter without the claim in that letter being allowed or denied, Brotherhood asserted

that the claim was payable as presented and subsequently Brotherhood submitted the Claim as set forth above to us.

Paragraph 2 of the Claim as presented to us purports to be a "continuing claim":

"... March 28, 1964 to and including July 31, 1964 and continuing thereafter until corrective measures are applied."

The claim as handled on the property, however, was not handled as a "continuing claim." Each claim letter stated that the list of times and details of the alleged violations would be supplemented from time to time, and the appeal letter of September 30, 1964, summarized:

"The instant claims run from on or about March 28, 1964, to and including July 31, 1964 and will be supplemented from time to time, as long as the violation continues, or until such time as corrective measures are applied."

Additional supplementary claims were in fact filed (we are dealing with one set in Award 15802 simultaneously with this case). Carrier had a right on the basis of Brotherhood's statements in the handling on the property to deal with claims as specifically filed, and not to expect to have them treated as "continuing claims." We find that the words "and continuing thereafter until corrective measures are applied" do not reflect the claim as handled on the property, and in sustaining the claim on the basis set forth in paragraph 4 of the Claim, we are not sustaining that part of paragraph 2 included in those words.

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 Employee involved in this dispute are respectively Carrier and Employee 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 defaulted the Claim under Article V of the August 21, 1954 Agreement.

AWARD

Claim allowed as modified above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1967.

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