

Award No. 16559
Docket No. CL-17044

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, 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-6229) 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 employees with established seniority right, 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, approximately from September 7 to and including November 21, 1965 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 employees' claim as set forth in Sections 1 and 2 hereof was presented to the Carrier's Manager-Labor Relations, Mr. J. C. Sidor, on February 8, 1966 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 period of time here involved must be allowed as presented, by reason of default.

EMPLOYEES' STATEMENT OF FACTS: The Carrier performs switching and transfer service in the Chicago Switching District with line haul and other switching Carriers, and in addition serves industries along its line of railroad. It maintains yards at South Chicago, 87th Street, West 22nd Street and Clear-

to place themselves on vacancies on preferred positions in their seniority districts, it being understood, under these circumstances, that the furloughed employe will be used, if the vacancy is filled, on the last position that is to be filled. This does not supersede rules that require the filing of temporary vacancies. It is also understood that management retains the right to use the regular employe, under pertinent rules of the agreement, rather than call a furloughed employe.

2. **Furloughed employees** desiring to be considered available to perform such extra and relief work will notify the proper officer of the Carrier in writing, with copy to the General Chairman, that they will be available and desire to be used for such work. A furloughed employe may withdraw his written notice of willingness to perform such work at any time before being called for such service by giving written notice to that effect to the proper Carrier officer, with copy to the General Chairman. If such employe should again desire to be considered available for such service, notice to that effect, as outlined hereinabove, must again be given in writing. Furloughed employees who would not at all times be available for such service will not be considered available for extra and relief work under the provisions of this rule. Furloughed employees so used will not be subject to rules of the applicable collective agreements which require advance notice before reduction of force.

3. **Furloughed employees** who have indicated their desire to participate in such extra and relief work will be called in seniority order for this service. Where extra lists are maintained under the rules of the applicable agreement such employees will be placed on the extra list in seniority order and used in accordance with the rules of this agreement.'"
(Emphasis ours.)

OPINION OF BOARD: Clerks, citing Article V - 1 of the August 21, 1954 Agreement, move, on the grounds that Carrier's highest officer failed to disallow the Claim within sixty days giving in writing reasons for the disallowance, that the Claim be allowed as presented.

Carrier avers that there was an agreement between it and Clerks to extend the sixty day time limitation. Clerks deny. The burden of proof vested in Carrier. It failed to satisfy the burden. We, therefore are compelled to sustain the Claim as presented.

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 failed to comply with Article V of the August 21, 1954 Agreement and consequently the Claim must be sustained as presented.

AWARD

Claim sustained as presented.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1968.