

Award No. 16870
Docket No. CL-17371

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert A. Franden, Referee

PARTIES TO DISPUTE:

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

THE OGDEN UNION RAILWAY AND DEPOT COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6390) that:

(a) The Carrier violated the several terms of the Agreement, including the Forty-Hour Work-Week-Rule, when it abolished three five-day clerical positions in the office of the General Car Foreman and established in lieu thereof two seven-day clerical positions and one rest-day relief position which was assigned with one fill-in shift on Wednesday to fill a regular forty-hour week assignment. Thus working two clerks on Sunday at the pro-rata rate of pay; and

(b) The Carrier shall be required to pay to Mr. F. P. Droesbeke and Mrs. B. T. Simpson the differential of one-half day's pay at the pro-rata rate for Sunday, September 18, 1966 and a like amount for each and every Sunday worked thereafter; and

(c) The Carrier shall be required to pay to Mr. F. P. Droesbeke one day's pay at the pro-rata rate of pay for Tuesday, September 20, 1966 and for each Tuesday thereafter when not worked (which day was a regular work day on his former assignment before being improperly assigned to work on Sundays); and

(d) The Carrier shall be required to pay to Mrs. B. T. Simpson one day's pay at the pro-rata rate for Thursday and Friday, September 22 and 23, 1966 and like amount for each Thursday and Friday thereafter when not worked (which days were regular work days on her former assignment before being improperly assigned to work on Sundays).

EMPLOYES' STATEMENT OF FACTS: Before the date of September 1, 1949 (National Agreement dated March 19, 1949) there did exist in the office of the General Car Foreman at Ogden, Utah three clerical positions fully covered by the scope and operation of the Brotherhood's Agreement, which

CARRIER EXHIBIT H — Vice President Cunningham's letter February 27, 1967, to General Chairman Murdock, replying to his inquiry of December 19, 1966.

CARRIER EXHIBIT I — Statement prepared by General Clerk F. P. Dreesbeke captioned "Position Report of General Clerk, OUR&D Car Department" outlining nature of duties performed on General Clerk position.

CARRIER EXHIBIT J — Memorandum dated January 17, 1967, outlining duties of Steno-Clerk position occupied by Irene H. Butler.

CARRIER EXHIBIT K — Memorandum dated January 17, 1967, outlining duties of Relief Clerk position in the OUR&D Car Department, held by Bonnie T. VanDyke (formerly B. T. Simpson).

The Carrier's communication of December 19, 1966, (Carrier's Exhibit H,) was never answered by the Organization and no further handling of the claim on the property ensued. Conference was neither requested nor held.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier has objected to the jurisdiction of this Board on the grounds that no conference was held by the parties to consider and attempt to reach agreement on this dispute in accordance with the requirements of Section 2, second, of the Amended Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board, dated October 10, 1934.

We have searched the record and find no evidence that a conference was held. That a conference be held is a mandatory jurisdictional requirement. See Awards 15622, 15400, 16614, 16370, 15606, 15617, 15534 and 16848.

The Organization alleges that it and the Carrier have agreed to a procedure of processing claims to this Board which does not require a conference. We find no evidence which satisfies the final provision of Section 2, Sixth of the Amended Railway Labor Act which reads as follows:

"And provided further, that nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties."

The holding by Referee Heskett in Award No. 16567 that "Section 2, Second, is mandatory unless an Agreement doing away with conferences is made" is good law.

We must dismiss 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

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 24th day of January 1969.