

Award No. 16939
Docket No. CL-16473

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6054) that:

(1) Carrier violated, and continues to violate, the Clerks' Rules Agreement at LaCrosse, Wisconsin when it established a position in the Superintendent's Office to perform work comparable to that of a Car Distributor and unilaterally assigned such work to an employee outside the scope and application of that Agreement.

(2) Carrier shall be required to bulletin this position to employees in Seniority District No. 37 at a rate of pay established by agreement between the parties.

(3) Carrier shall be required to compensate the successful bidder the difference in the rate of pay between what he would have earned had this position been bulletined in accordance with the Rules Agreement and the position held, retroactive 60 days from June 11, 1965 and for all subsequent days until the violation is corrected and the position is bulletined and assigned in line with the provisions of the Clerks' Rules Agreement.

EMPLOYEES' STATEMENT OF FACTS: Car Distributor positions, where such positions have been established and maintained are positions fully covered by all rules of the Clerks' Agreement. The duties of such positions consist of distributing of equipment, preparing necessary reports, maintaining records and other related clerical work.

Apparently, due to changes in methods of car control and distribution, new or additional full time positions and employees were required to perform that work on the various operating divisions. However, in lieu of establishing Car Distributor positions under the Clerks' Agreement, as it has done in the past, the Carrier has established positions of Special Representative to the

CARRIER'S EXHIBIT B - Letter written by Mr. Amour to Mr. Gilligan under date of May 26, 1966.

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves the same parties and issues as in Award Numbers 14682, 15014 and 15997 wherein the claims were disallowed for lack of proof. We find these awards to be controlling in the instant dispute and apply the doctrine of Stare Decisis.

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 the claim fails for lack of proof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February, 1969.