

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6742) that:

(1) The Carrier violated the Special Agreement of May 1, 1964, when work of Carrier employees of this Craft and Class of Seniority District No. 26, was assigned to and performed by Carrier employees of this Craft and Class in Seniority District No. 2, effective October 21, 1968, and on subsequent dates.

(2) Claimant Thomas G. Thatcher shall now be compensated for eight (8) hours at the rate of pay of Ore Clerk for October 21, 1968, and on each subsequent date through November 3, 1968, that the Carrier continued to violate the provisions of the Agreement of May 1, 1964.

(3) Claimant Teckla L. Nelson shall now be compensated for eight (8) hours at the rate of pay of Ore Clerk for November 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, December 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 1968, and each subsequent date that Carrier continued to violate the provisions of the Agreement of May 1, 1964.

EMPLOYEES' STATEMENT OF FACTS: Claimants were regularly assigned to positions of Ore Clerks in Seniority District No. 26 at the Proctor Yard until October 21, 1968. On that date Claimant Nelson, upon receiving notice of abolishment of her position which was issued on October 14, 1968, commenced a two (2) week vacation period on October 21, 1968 through November 1, 1968. Claimant Thatcher's Ore Clerk position was abolished October 21, 1968, and he was available for work as an Ore Clerk commencing on October 21, 1968, and thereafter.

Upon abolishment of the positions of Ore Clerks, Seniority District No. 26 positions, the duties of the abolished positions were assigned to and performed by the Ore Sorter, a Seniority District No. 2 position.

After working October 20, 1968, the claimant, Miss Nelson, started a two-week vacation period commencing on October 21, 1968, and running through November 1, 1968. After completing the vacation period, Miss Nelson did not exercise her seniority; she, instead, elected to remain furloughed under the provisions of Rule 14(d), which provides:

"An employe laid off on a seasonal position . . . desiring work during such lay-off, must exercise his seniority . . . within ten (10) days from date reduction is made in regular job, otherwise employe will be considered as furloughed on regular position until it is again established."

Miss Nelson had sufficient seniority to permit her to hold an assignment and could have exercised her seniority to another position upon completion of her vacation period. However, she waived her right to work and elected to furlough herself under the above-quoted rule; she has done so for many years upon reduction of her seasonal assignment as ore clerk.

After working October 20, 1968, the claimant, Mr. Thatcher, also elected to furlough himself under the provisions of Rule 14(d) quoted above. He also had sufficient seniority to permit him to work during the dates of claim in this case.

As evidence, in support of the above statements, the Carrier has attached as its "Exhibit C", a summary showing the name and seniority dates of junior employes working during the period of these claims in the Transportation Department seniority districts in which claimants hold seniority. A review of this Exhibit will show that claimant Nelson could have worked in both Seniority Districts No. 2 and No. 26 during the period of these claims, and claimant Thatcher could have worked in either Seniority Districts No. 2, No. 6 or No. 26 during this period.

Copies of the correspondence involved in the handling of these claims on the property are attached and marked as "Carrier's Exhibits D and E."

(Exhibits not reproduced.)

OPINION OF BOARD: The Petitioner alleges that the Carrier improperly abolished positions of ore clerks in Seniority District No. 26 and assigned the duties of the abolished positions to an ore sorter in Seniority District No. 2, commencing October 21, 1968, in violation of the Agreement of May 1, 1964.

Under the Special Agreement of May 1, 1964, a copy of which has been made a part of the record, Seniority District No. 26 was established under Paragraph 3 reading:

"3. Effective May 1, 1964, a new seniority district shall be established which shall be numbered District No. 26 and which shall include all positions of a seasonal nature at the Ore Scales, Ore Yards, and Ore Dock Offices at Proctor, Duluth, and Two Harbors. To provide the initial listing of employes on Seniority District No. 26, existing rosters for Districts 2 and 6 shall be integrated on a seniority basis, as shown on attachment 'C'."

Paragraph 4 of the Special Agreement provides:

"4. Employees holding seniority on Seniority District No. 26 shall have seniority rights to any seasonal position in the Ore Scales, Ore Yard, and Ore Dock Offices only as shown on attachment 'D'."

Immediately preceding the first date of the claim, Claimant Nelson was regularly assigned to position of ore clerk, 8:00 A. M. to 4:00 P. M., Monday through Friday, and Claimant Thatcher was regularly assigned to position of ore clerk, 4:00 P. M. to 12:00 midnight, Wednesday through Saturday. All ore clerk positions at Carrier's Proctor Yard were abolished effective October 21, 1968.

The Petitioner contends that the agreement was violated when the ore clerk positions in Seniority District No. 26 were abolished and the work transferred to ore sorters in Seniority District No. 2 prior to the end of the ore shipping season, which continued after October 21, 1968, or until December 14, 1968.

The Carrier contends that there is no guarantee that positions in Seniority District No. 26 will continue for the entire ore shipping season if the positions are not needed; that the Petitioner is attempting to expand the provisions of the agreement; and if the abolishment of the ore clerk's position could be construed as "The arbitrary consolidation of District No. 26 work into District No. 2", such action was permissible under the provisions of Rule 16 of the basic Agreement of January 1, 1956. In its submission it also cites Article III, Section 1 of the February 7, 1965 Mediation Agreement Case No. A-7128.

The parties have not defined "positions of a seasonal nature" or "seasonal positions" as those terms are used in the Special Agreement of May 1, 1964, nor has any evidence been submitted to show how such terms have been applied from May 1, 1964, the date of the Special Agreement, to date of the occurrence here involved, October 21, 1968. The Board construes the term "positions of a seasonal nature" to cover positions established to work during the ore shipping season.

In the absence of a rule specifically providing for such action, a Carrier may not unilaterally remove work from the confines of one seniority district and put it in another. Based on the record as developed in the handling of the present dispute on the property, we find the Agreement was violated by the abolishment of the ore clerk position in Seniority District No. 26 and the transfer of work to ore sorter positions in Seniority District No. 2 prior to the end of the 1968 ore shipping season. We do not consider that the Carrier's action was permissible under Rule 16, which pertains to offices or departments being consolidated or positions being moved from one seniority district to another. No offices or departments were consolidated or positions moved from one seniority district to another in our present case. No rule was cited in the handling on the property permitting the abolishment of positions in one seniority district and the transferring of the work of such positions to another seniority district. In the handling on the property the Carrier's Director of Labor Relations advised the Organization that the provisions of the February 7, 1965 Mediation Agreement were not applicable in the present dispute. However, Carrier in its submission before this Board, for the first time, contended that the provisions of the February 7, 1965 Mediation Agreement supported its action in the instant case. We reject this contention of the Car-

rier for reason that it is well settled that contentions or issues raised by the parties for the first time before the Board will not be considered in the determination of disputes.

The record shows that ore shipping season did end on December 14, 1968. The claims will be allowed.

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 Agreement was violated.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1970.