

Award No. 18423
Docket No. CL-18750

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, 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-6759) that:

(1) The Carrier violated, and continues to violate the provisions of the Special Agreement of July 29, 1968, when effective November 18, 1968, and on subsequent dates, the Carrier refused, and continues to refuse to compensate Claimant in accord with the provisions of this Special Agreement.

(2) Claimant Russell Sundberg shall now be compensated for mileage, travel time, and meal and lodging allowance in accordance with the Agreement of July 29, 1968, effective with November 18, 1968, and for each subsequent date that the Carrier continues to violate the Agreement.

EMPLOYEES' STATEMENT OF FACTS: Claimant is a Carrier employe who has acquired and maintains a seniority date of March 9, 1944, in Seniority District No. 3, Mechanical Department, Missabe Division. On November 18, 1968, Claimant was required, in order to retain a position in this Craft and Class in his Seniority District, to exercise his seniority to a position in Proctor, Minnesota.

Immediately prior to November 18, 1968, Claimant was compensated as the occupant of a rest day relief position at Biwabik and Virginia, Minnesota. Biwabik, Virginia and Proctor, Minnesota, are all positions in the Mechanical Department of the Missabe Division in Seniority District No. 3. Due to reduction of force, Claimant was required in the exercise of his seniority to occupy a position in his Seniority District in Proctor, Minnesota; a point on Line-Of-Road of the Carrier in excess of forty (40) miles from his headquarters point. Upon occupancy of the position at the new location, claim was filed for the travel time, mileage and meal allowance provided by the Agreements of July 29, 1968.

The Special Agreement of July 29, 1968, provides in paragraph 2, that Carrier employes of this Craft and Class from the North End or the South

eral Chairman and the clerks' negotiating committee involved in the negotiation of that agreement, fully realize that it was never intended to apply to a Mechanical Department clerical employee, they have not contended otherwise and cannot, in good faith, do so.

The claimant in this case was, in no way, affected by the computerized car control program. He exercised his seniority during the winter of 1968-69 as he has in past winters (1952-53, 1953-54, 1954-55, 1966-67 and 1967-68) to a roundhouse clerk's assignment at at Proctor roundhouse.

A copy of the correspondence involved in the handling of the claims in this case on the property is attached and marked as Carrier's Exhibit C.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts out of which this claim arose are not in dispute. Due to a reduction in force, Claimant exercised his seniority to a position in excess of forty (40) miles from his headquarters point. Upon occupancy of the position at the new location, claim was filed for the travel time, mileage, and meal allowance provided by the Agreement of July 29, 1968.

The pertinent provision of the July 29, 1968 Agreement provides that the Company will provide travel expense to north end or south end employees who are required to work in excess of 40 miles from their home headquarters, for a period of two years commencing July 1, 1968.

The Petitioners aver that Claimant was a North End employee, and, in order to continue in Carrier's service, he was required to occupy a position in excess of 40 miles from his home headquarters. Carrier contends that when the parties negotiated the Agreement of July 29, 1968, they intended to have such Agreement apply only to Transportation Department employees, and since Claimant is an employee of the Mechanical Department, he is not covered by this Agreement, and thus should not be compensated for his travel expenses.

We are constrained to hold that Carrier's assertion is without merit. It is axiomatic that this Board may only interpret and apply collective bargaining agreements negotiated and executed by the parties. We are without jurisdiction to add to, alter or detract from the written agreement. We must ascertain and give effect to the intention of the parties but this intention must be deduced from the written agreement. See Awards 13491 (Dorsey), 10203 (Gray), 18088 (Quinn).

We are bound by the clear and concise language of the Agreement of July 29, 1968. We cannot read into it something that is not there. That Agreement, in unambiguous language, provides travel expenses to North End employees who are required to work in excess of 40 miles from their home headquarters. No provision limiting the Agreement to employees of the Transportation Department only can be found nor is it within our power to supply such a provision. Had the parties intended such a limitation, it would have been a simple matter to have so worded their intention. This they failed to do. In the absence of such a provision, the Agreement is applicable, by necessity, to all North End or South End employees of the Carrier, including the Claimant.

In their submission, Carrier asserted that Claimant was not "required" to work in excess of 40 miles from his home headquarters. This defense is not properly before the Board since Carrier failed to raise it during handling of the dispute on the property. On the property, Carrier proffered several reasons why the claim should be denied, but this was not one of them. 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. Consequently the defense is untimely and the claim 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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February, 1971.