

Award No. 19026
Docket No. CL-19177

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6915) that:

(a) Carrier violated and continues to violate the Agreement between the parties effective May 1, 1955, as revised, when, by unilateral action it established and maintains, within the New York District, a separate extra list for Group 1 (Clerical employees at its' Perth Amboy Freight Station and unilaterally designates a junior furloughed employee from the New York District (Mrs. B. Young) as the extra clerk entitled to work at Perth Amboy, with prior rights to all extra work, vacation relief, etc., at that point, thereby depriving senior furloughed employees in the New York District of their contract rights to perform extra work at Perth Amboy; and,

(b) Carrier further violated and continues to violate the Agreement when it denies Mrs. B. Young the right to perform extra work as senior available furloughed employee throughout the New York District, and,

(c) Carrier shall, because of such violations, be required to pay the senior available furloughed employee (H. Cebula, T. Bowen or successor) a days pay at the rate of the position filled by Mrs. B. Young for each and every day that Mrs. Young performs extra work at Perth Amboy from June 5, 1968 forward until the violation is corrected; and,

(d) Carrier shall be required to pay Mrs. B. Young a days pay at the rate of the position filled by any junior furloughed employee on the New York District; and,

(e) In addition to the "days pay" in items (c) and (d) Carrier shall also be required to allow the senior available employee the mileage and travel time allowances applicable had they each been properly called for service.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties dated May 1, 1955, including revisions, which is on file with

in the District for the Extra List," and failing to do this Arbitration Award No. 298 is thereby violated. Section C, II A of Award No. 298 reads as follows:

"For employees, other than those serving in regular positions or in regular assigned relief positions, the Carrier shall designate a headquarters point for each employee."

The above quoted Section is precise, clear and unambiguous and does not support the organization's contention that only one headquarter's point can be established.

The Employees' maintain that only one headquarters for the extra list of the New York Seniority District can be established under the provision of Award No. 298, however, the foregoing quoted provision does not restrict or prohibit the carrier from establishing a headquarters point for each and every employee on the extra list, and nothing therein requires the same headquarters point for such employees.

Carrier established headquarters for the four employees shown in the District Chairman's letter to Supervisor-Stations dated June 27, 1968 as follows:

1. Barbara J. Mattarochio — Perth Amboy, N. J. (Carrier's Exhibit "G")
2. Mary Antas — Newark, N. J. (Carrier's Exhibit "H")
3. Thomas Bowen — Newark, N. J. (Carrier's Exhibit "I")
4. Helen Cebula — Newark, N. J. (Carrier's Exhibit "J")

and in accordance with the provisions of Award No. 298. There was no violation of any rule or agreement or of Award No. 298.

(Exhibits not reproduced.)

OPINION OF BOARD: At the outset Carrier raises a procedural defect alleging that the Organization failed to comply with the requirements of the August 21, 1954 National Agreement (Rule 33 of the Agreement) because the claim as initially filed failed to identify Claimants and failed to specify dates involved; and that the part of claims, namely: "and these claims to run until such time as this violation on the part of the Carrier is corrected" was untimely and improperly presented, as original claims are required to be presented and/or amended at the initial step of handling, and the amendment was too vague for consideration.

The record discloses that on June 27, 1968 the Organization's District Chairman, William A. Criger, filed claims "for any Employees who have been, and who are, adversely affected due to this violation."

Carrier's Supervisor Stations, J. C. Myers, replied to Mr. Criger by letter, dated August 20, 1968, in part as follows:

"Your letter dated June 27, received July 1, 1968.

First — What are the claims you are submitting? How is the office to know who you are making claim for, whereby we are in position to properly check and handle a claim. Rule 33 is clear, all claims must be presented on behalf of the employees involved, this you have failed to do. You have not presented the necessary evidence and information needed to properly present this claim for consideration. Therefore, as this claim has not been presented as required by the rule it is denied for that reason."

Thereafter, General Chairman, George C. Baier, by letter dated October 16, 1968 to Carrier's Superintendent of Stations, J. C. DeLonzis, advised that the Employees involved in these claims are M. Antas, H. Cebula, T. Bowen, and B. Mattarachio, and concluded by saying: "We are asking that a check of the payrolls be made in order to ascertain what each of these Employees are entitled to, and these claims to run until such time as this violation on the part of the Carrier is corrected."

This Board was confronted with a somewhat similar situation in Award No. 18640, involving these same parties to this dispute, wherein it states:

"We now look to the alleged failure of the Employees to include in the claim, as filed, the names of the claimants and the dates on which the violation occurred. The claim filed by the District Chairman stated, in part, 'Claim is being submitted for any and all employees affected due to this violation, from December 3, 1966, up to and including such time as this violation is corrected. Employees affected can be determined by a check of the payroll at Pier 46, N. Y. These claims are in addition to any other claims pending.' Clerly, the claim as presented is deficient and does not meet the requirements of Rule 33, which states that the claim 'must' be presented on behalf of the employees involved. This can only mean that the claimant or claimants must be named and identified. There are no ambiguities in the language of the rule as numerous awards have so held."

The Board in said Award No. 18640 went on to conclude that Rule 33 of the Agreement was not met for it requires that such information (naming of claimant - date of claim) be part of the initial claim and be in writing.

Finding that the Organization failed to comply with the requirements of the August 21, 1954 Agreement (Rule 33 of the Agreement), we must dismiss this 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

That the Agreement was not violated.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1972.

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