

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19520
Docket Number CL-19534

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline & Steamship Clerks,
{ Freight Handlers, Express & Station Employees
{ St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7040) that:

(1) Carrier violated the terms of the Agreements between the parties when it refused to permit Mr. Van H. Elting to perform the duties of his six day position on the Saturday rest day thereof without proper notice under Agreement rules.

(2) Carrier shall now be required to reimburse Mr. Elting for March 7, 14, 21, 28, April 18 and 25, April 2, 1970 and every other Saturday thereafter that Claimant Van H. Elting is refused the right to work his established position at the penalty rate of Diesel Clerk Position No. 61 until such time as the Carrier complies with the provisions of the Agreement by rebulletining the Relief Position No. 3080 or properly abolishing that position under the governing Agreement rules.

OPINION OF BOARD: Before going into the merits of this dispute, the Board must consider Carrier's charge that the claim is procedurally defective and, therefore, should be dismissed.

The thrust of Carrier's procedural argument concerns itself with the doctrine of laches and stems from an arrangement that, at least in part, was concurred in by the Organization for twenty months. Claimant, prior to July 29, 1968, occupied a 5-day assignment on 7-day position #61, Diesel Clerk. Claimant's rest days were Saturday and Sunday, and rest day relief was provided by Relief Position #3080. On July 29, 1968, the occupant of Relief Position #3080, on his own motion, vacated the position and reverted to the extra board. When relief position #3080 became vacant, it was neither re-bulletined nor abolished.

The Record in this dispute is silent with respect to four days' work of Relief Position #3080. However, on one of the days (Saturday), which was the first relief day on Position #61, Diesel Clerk, the incumbent of the Diesel Clerk position (Claimant herein) worked and was paid penalty rate under the provisions of Rule 36¹(k), Work On Unassigned Days. This continued for the next 20 months, at which time Claimant was instructed to discontinue, effective March 7, 1970, working Saturdays and, thereafter, Saturdays were blanked as, presumably, were Sundays.

Following notification to Claimant that Saturday work would no longer be required, the claim that is before us was instituted on the property. This claim asks pay for the Claimant for Saturdays "until such time as the Carrier complies with the provisions of the Agreement by re-bulletining the Relief Position No. 3080 or properly abolishing that position under the governing agreement rules."

Rule 10 of the Agreement, entitled "Bulletins", provides, in part: "New positions or vacancies shall be promptly bulletined." There is no question that a vacancy existed in Relief Position #3080, effective July 29, 1968. Rule 10 clearly requires that it be bulletined promptly, or abolished. From that date, the Organization had sixty days within which to protest Carrier's failure to bulletin the position or request the Carrier to abolish it. This the Organization did not do. Under the circumstances, therefore, Carrier's motion to dismiss is well taken.

Having dismissed the claim on procedurally defective handling, it is unnecessary to rule on the merits of 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 Employee involved in this dispute are respectively Carrier and Employee 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 be dismissed on grounds of procedural defect.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. K. Kilham
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1972.