

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19999  
Docket Number CL-20098

Irving T. Bergman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Bangor and Aroortook Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-7231)  
that:

1. Carrier violated Rules 1, 3 and 29. among others of the Clerks' Agreement, signed September 21, 1950, as amended, when it abolished the position of "Switchboard Operator" in its General Offices. at Bangor, Maine and unilaterally distributed the remaining work to other seniority districts and to employees fully exempted from all the rules of the agreement.

2. Carrier shall be required to compensate Mrs. Pearl H. Johnston, incumbent of the abolished position for all pay losses, including subsequent wage increases, fringe benefits, insurance premium payments, vacation credits, holidays and interest at 6% compounded, continuous from November 15, 1971 until rectified.

OPINION OF BOARD: Ye will first dispose of Petitioner's contention that Carrier violated the time limit provisions of Article V of the August 21, 19% Agreement. Claim was initiated under date of November 17, 1971, substantially as in the Statement of Claim before the Board, and was denied by Carrier's Treasurer in letter of November 26, 1971. Claim was appealed on December 14, 1971 by the Organization's General Chairman to the Carrier's Manager of Personnel. A two-day conference, January 26 and 27th, 1972, was held between the parties after which, under date of March 24, 1972, Carrier's Manager of Personnel advised that the claim remained denied. In letter to that Carrier Officer on May 3, 1972, the General Chairman directed attention to the Carrier's violation of the Time Limit rule. Under date of May 9, 1972, the Manager of Personnel advised the General Chairman, in part, as follows:

"This was handled during our conference January 26 and 27, 1971, was denied verbally at that time and written confirmation of my denial was given you in my letter of March 24, 1972, which is within the time limitation rule."

This issue has been resolved against the Carrier in National Disputes Committee Decision 15, i.e.:

"The National Disputes Committee rules that there was no extension of the time within which the Superintendent **was** required to render his decision on appeal, and finds that such decision **was** not rendered within the applicable **time** limit. In this connection the **National Disputes Committee** points out that where either party has clearly failed to comply with the requirements of Article V the claim should be disposed of under Article V at the stage of handling in which such failure becomes apparent. If the Carrier has defaulted, the claim should be allowed at that level as presented; and if the employee **representatives** have defaulted, the claim should be withdrawn.

DECISION: The claims shall be allowed as presented, on the basis of failure of the **Carrier** to comply with the requirements of Article **V** of the **Agreement** of August 21, 1954."

We likewise find there **was** no extension of the time **limits within** which the Manager of Personnel **was** required to render a decision in writing from the date the claim **was** presented to him on appeal. **Verbal denials are** not afforded in the language of the Time Limit rule. (Accord Awards 15457, **Kenan**; 14689, Englestein; **14758 Ritter**; **17083**, Jones; 19096, Hayes.)

In compliance with National Disputes **Committee** Decision **16**, the claim is **payable** under the **provisions** of the Time Limit rule from the **date** of claim, November 15, 1971. up to the date of the receipt of the denial letter dated **March** 24, 1972 by Carrier's Manager of Personnel.

With respect **to** the merits of the Claim: We note that the **same** parties were involved in Docket CL-19900. resulting in Award No. 19783, in which **Petitioner's** claim **was** based on the contention that certain work of an **abolished** position of **Clerk-Typist was** transferred across seniority district lines to the position **of** Switchboard Operator and other duties thereof given to an **employee whose** position **was** excepted from the Agreement. **In** Award 19783, it **was** held that Carrier had violated Rule 1 **(b)** of the Agreement "when it transferred part of the work involved to an employee in another seniority district and assigned the remaining work of the abolished position to **a** non-contract employee, without conference and agreement with the Organization." as provided by Rule 29.

In this dispute, effective November 15, 1971 the Carrier transferred certain duties back from whence they originated and discontinued the **performance** of certain other duties (switchboard operation) by means of technological changes (institution of **direct** telephone service to each individual department and office.)

Carrier states in this **dispute**:

"Eased ~~on the precise~~ language of **Section 1**, Article III of the February 7, 1965, **Agreement**, it appeared that this Agreement took precedent over and superseded Rule 3 and 29(a) **of** the Rules in effect on the property. It was on the basis of this interpretation that the transfer of work from the Disbursement Section Seniority Roster of the Accounting **Department** was made to the Treasury Department. The manager **authorizing** this transfer of work **felt that** it was accomplished in accordance with the provisions of this National Agreement. However, on page 10 of the agreed upon interpretations of the February 7th Agreement, it **stipulated** that **implementing** agreements will be **required** in the following situations:

- '(a) Whenever the proposed change involves **the** transfer of **employees** from one seniority district or roster to another as such seniority districts or rosters existed on February 7, 1965.
- (b) Whenever the proposed change, under the agreement in effect prior to February 7, 1965, would not have been permissible without conference and agreement with representatives of the Organization.

"When the restriction covered by paragraph (b) above was discovered, it **was** then apparent that the transfer of work from Accounting to Treasury was in violation of the Agreement of February 7th **as** well as Rules 3 **and 29(a)** of the work **rules** in effect on the property. There was no implementing **agreement** providing for the transfer, therefore, the Carrier had no other alternative than to return the **work** to the seniority district from **which** it **came** and where it still belonged."

**Carrier** further **states**:

"Obviously the **work** was improperly assigned to the Switchboard Operator and was restored to the seniority district where it belonged."

Carrier **restored** the **work** which it required to **be performed to the seniority district** from which it had **been** improperly transferred, **which was** a propel: **restoration** and one upon which the Petitioner had based the complaint **in** Docket CL-19900 and upon which a **sustaining** decision **was** rendered in Award 19783. The question **is** moot and, therefore, **we dismiss** the claim for **all** dates ● ubacquent to **March 24, 1972**.

FINDINGS: The Third Division of **the** Adjusrment 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 Carrier violated the Agreement to the extent indicated in the **Opinion.**

A W A R D

Claim **sustained** to the extent indicated **in** the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Paulson  
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of October 1973.