

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 20064
Docket Number CL-20058

Frederick R. Blackwell, Referee

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

PARTIES TO DISPUTE: (
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7242) that:

1) Carrier violated and continues to violate the Clerks' Rules Agreement when it arbitrarily transferred work across seniority district lines.

2) Carrier shall now be required to compensate **employee** M. Quitney for eight (8) hours per day at the rate of Caller-Clerk Position 28080 for May 10, 1971 and for all subsequent days until the violation is corrected; **compensation** to be determined by joint check of Carrier's records.

OPINION OF BOARD: We have a threshold question of whether the claim presented here is procedurally correct, inasmuch as the Carrier contends in its Reply Brief that the instant claim **represents** an **entirely** new position as compared to the claim advanced on the property.

The substance of the claim made on the property is found in the following letter written by Claimant to Carrier's Assistant Master Mechanic under date of May 10, 1972:

"I am requesting Seniority in District 42 with an implement agreement between the Milwaukee Railroad and Brotherhood of Railway, Airline and Steamship Clerks **with** reference to Rule 12 due to abolishment of position No. 28080 on **Seniority** District 56 as Caller Clerk at Mason City, Iowa; if no agreement is reached under Rule 12, I Meridith Quitney hereby file under provisions of Rule 22-F a fair and impartial hearing because of unjust treatment clause of work being transferred to Seniority District 42 and being performed by unprotected Yard Clerk Employees with less Seniority than my Seniority Date.

"**I also file** with you eight (8) Hr. a day **Time** Claims at present rate of pay on Position No. 28080 from May 10, 1971 and all subsequent days."

In subsequent handling on the property the above letter was forwarded to a Carrier Officer as an appeal procedure along with the following cover letter written by the General Chairman:

"Please give consideration to the claim of **employe M. Quitney** copy of which is attached and referred to you by the System Committee of the Brotherhood in her behalf on appeal from the decision rendered by Assistant Master Mechanic, Mr. R. A. **Hargis.**"

The foregoing shows that the rules mentioned on the property were Rules 12 and 22 **(f)**. However, in the claim presented to the Board, Rules 12 and 22 (f) are not mentioned and instead the claim is now predicated on Carrier's violation of Rules 2(a), (f), 3 (a), 6 (a) and 57. On these facts there can be no doubt that the claim as presented to the Board is not the same claim that was handled on the property and, consequently, there is no proper claim before the Board for its consideration. The employees have the responsibility and burden to cite the rules and agreement language relied upon during handling on the property. This, of course, is a fundamental due process **right** of the other party, and where the rules are not cited, discussed, or in some way stated on the property, the omitted rules cannot be supplied for the first time in the submission of claim to this Board. We conclude therefore that the claim as stated is not properly before the Board and, accordingly, we shall issue a dismissal Award. For similar rulings see Award Nos. 15835, 19857, 19858, 19902, and 19970.

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 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 is dismissed in accord with Opinion.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A W Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1973.