

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20349

Docket Number MS-20484

David P. Twomey, Referee

(R. L. Saul, Jr.

PARTIES TO DISPUTE: (

(Norfolk and Western Railway Company

STATEMENT OF CLAIM

That the Carrier violated the **current Clerk's** Agreement, particularly Rules 3, 5, 6, 10, 11, 12, 13, 14, 15, 18 and 65, when under date of February 4, 1971 it posted notifications. file 16-B, To Employees Concerned, Positions - Clerks, Location - Portsmouth Scale Office, of eighteen (18) positions to be abolished effective February 12, 1971, **names** of seventeen (17) **incumbents** listed.

That the Carrier did, under date of February 4, 1971, per bulletin Nos. 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29, advertise the eighteen (18) clerical positions at **Portsmouth** Scale Office, to be established effective February 13, 1971 and pooled per shift, as advertised, the eighteen (18) clerical positions and incumbents thereto by a consolidation of **primary** duties covering the complete scope of all working requirements within the Portsmouth Scale Office.

It is **my** position that the above noted consolidation of primary duties is a deliberate violation of Rule 12 which specifically specifies "primary duties", not the complete scope of all work of the Scale Office; that it has been past practice for the senior **employees** to bid on and be **assigned** to a clerical position of determined assignment and location within the Scale Office; that there are specific preferred eight hour jobs within the office where seniority should prevail under Rules 3, 5 and 6; that qualifying under Rule 10 by new employees could not be possibly complied with; Rule 11 when there is no specific position and also Rules 13, 14, 15, 16, and 18 when there are no specific positions.

Under the provisions of Rule 40, and also Rule 63, due to the Carrier's failure to comply with the provisions of the current **Clerks' Agreement**, please accept this claim to be effective December **6th**, 1971 and to run continuous **until** the violations are corrected for eight (8) hours per day, five (5) days per **week**, assigned hours per-bulletin indication and at the **monthly** rate of pay in the amount of \$772.16, these amounts to include future **adjustments**.

OPINION OF BOARD: Before considering Petitioner's claim on its merits, we must first deal with procedural **arguments** raised by Respondent Carrier. These are:

- "1. The claim **herein** involved is not a continuing claim as it is based on a single occurrence, job abolishment notice dated February 4, 1971, to be effective February 12, 1971; therefore, claim is barred as it was not filed until January 20, 1972.
2. The identical issue was decided by your Board in dismissal Award 18662.
3. The claim in this case is a resubmission of a claim that has already been **withdrawn** by Petitioner's duly accredited labor representative."

A finding in favor of Respondent Carrier on any **one** of the three points will cause the claim of Petitioner to be dismissed **and** will preclude this Board from consideration of the Claim on its merits.

With respect to point 1, we find that Carrier's arguments on the date of occurrence to be sound. Review of the Statement of Claim indicates that Petitioner is alleging "That * * * Carrier violated the * * * Clerk's Agreement, * * * under date of February 4, 1971 * * * Obviously, the instant claim is based upon a single occurrence--February 4, 1971. **Under** the Parties' Time Limit Rule, claim was required to be filed within 60 days of that date. The record indicates that this claim was filed on January 20, 1972. **Un-**der the Authority of Award 19341 (O'Brien) and the Awards cited therein, we hold that the instant claim is out of time.

We will dismiss 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 **Employees** involved in this dispute **are** respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

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That this Division of the Adjustment Board has **juris-**
diction over the dispute **involved** herein; and

Claim dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Parker*
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1974.