

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21588
Docket Number CL-21489

David C. Randles, Referee

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

PARTIES TO DISPUTE: (

(**Elgin**, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood, GL-8124, that:

1. The Carrier violated **and** continues to violate the effective Clerks' Agreement when it **removed** work from Marketing Department Rate Clerk Position **in** Seniority District No. 1 and assigned such **work** to the Assistant Chief Rate **and** Overcharge Claim Clerk in **Accounting** Department, Seniority District No. 2 without prior Agreement;

2. The Carrier shall now be required to compensate Clerk Leonard Gewehr and/or his successor or successors in interest, **namely**, any other **employee** or employees who have stood in the status of claimant as occupant of Position AC-454 and as such were adversely affected, the difference between the rate of pay of Position AC-454 and the rate of pay of a Marketing Department Rate Clerk Position, commencing on September **20, 1974** and continuing for each and every day thereafter, five days per week that a like violation occurs .

OPINION OF BOARD: Clerical personnel of the Carrier are divided into four separate seniority districts. Districts 1 and 2 are involved in the instant dispute. District 1 includes employees in the Marketing Department, and District 2 includes employees in the Accounting Department.

The parties **are not** in disagreement concerning Rule 5 which prohibits the unilateral transfer **of work** from one seniority district to another and requires an Agreement to effect such a transfer.

Prior to 1964, the Carrier maintained a position, FC 6, Freight Claim Investigator, in Seniority District 1, the duties of which are in part, "investigation of local wercharge**make** settlements with customers."

The Carrier abolished this position, (**FC 6**), and established a new position in Seniority District 2, having gained an Agreement with the Organization. The new position was AC 422, Interline Clerk, the duties of which were identical to FC 6.

Within Seniority District 1, in the Marketing Department, there were two positions, TR 4 and TR 5; Claim Rate Clerk and Assistant Claim Rate Clerk, whose responsibilities included "**check and show** rates **and divisions on claims**."

Within Seniority District 2 there was also a position, AC 244, Assistant Chief Rate Revision Clerk, which position included the auditing of rates, not the determination thereof.

On January 28, 1969, the Carrier abolished positions AC 422 and AC 244, and established a **new** position, AC 454, Assistant Chief Rate and Overcharge Claim Clerk, which, in extent, was a **combination** of two Seniority District 2 positions, AC 244 and AC 422, into one and the same position. This position was awarded to employee Gonsoulin who held it until January 1971 when he vacated it. This position was subsequently held by the Claimant, Mr. Gewehr, who on September 20, 1974, was directed by memorandum to do rating of overcharge claims. The job description of this position, **AC 454, includes "auditing of rates. . . furnish rate information... handle correspondence concerning overcharge claims . . . , investigate and make overcharge settlements with patrons."**

The Organization contends that the memorandum of September 20, 1974, requires the incumbent of AC 454, (Seniority District 2), to do work normally done by an employee in Seniority District 1. The job description of AC 454 does, indeed, relate to the rating of overcharge claims, "investigate and make overcharge settlements,"! **and** thus, when said position was created and its job description promulgated, the Organization should have made the claim then, in 1969, rather than in 1974. The question of whether or not the employee began to do the work in 1969 is **moot**.

The Agreement provides that a claim **must** be made within sixty (60) days of an alleged violation of the Agreement. The claim, therefore, is barred under the rule of laches.

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 claim** is barred.

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The claim is dismissed.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 17th day of June 1977.