

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21618
Docket Number CL-21399

David C. Randles, Referee

PASTIES TO DISPUTE: (**Brotherhood of** Railway, Airline and Steamship Clerks
Freight Handlers, Express and Station **Employees**
(The **Atchison, Topeka and Santa Fe Railway Company**)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-7953) that:

(a) Carrier violated the **rules** of the current Clerks' Agreement at Fort Madison, Iowa, on Wednesday, March 27, 1974, when it wrongfully discharged Mr. Earl J. **Brammer** from service; and,

(b) Carrier **shall** now restore Mr. Earl J. **Brammer** back to active service with **all** his seniority rights and other rights accruing thereto unimpaired; and,

(c) Carrier shall now pay Mr. Earl J. **Brammer** eight (8) hours at pro rata rate of his former position, Agent Train Order Clerk Position Number 6132, Plattsburg, Missouri, \$41.6390 per day, for Wednesday, March 27, 1974, and for each work day thereafter until he is properly restored to active service and violation is corrected.

OPINION OF BOARD: **Claimant** Earl J. **Brammer** was regularly assigned to the position of Agent Train Order Clerk at Plattsburg, Missouri. Following an investigation which was held on March 8, 1974, the Carrier informed the **claimant** that he would be dismissed from service at the close of work, Tuesday, March 26, 1974. Subsequently, the General **Manager** of the Carrier having received the transcript of record and review of the claimant's record, transmitted to the **Organization** the following determination by letter dated July 31, 1974: "... it is our opinion the period of time he has been out of service is sufficient discipline and, therefore, we are authorizing Superintendent, who receives copy of this letter, to reinstate **him** with seniority and vacation rights unimpaired, but without pay for the time he has been out of service."

The Organization's claim is relative to payment for lost **wages** from the date **claimant** was dismissed until the time he was restored to service. The claim is based upon a violation of **Rule 47-A**.

"47-A. All claims or grievances shall be handled as follows;

(1) All claims or grievances **must be** presented in writing by or on behalf of the **employee** involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim

"or grievance is based. Should **any** such claim **or** grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the **employee** or his representative) in writing of the **reasons** for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the **contentions** of the Carrier as to other similar claims or grievances."

Claimant complied with the mandatory requirements of Rule 47-A; however, the dispute arises over the fact that the Carrier officer authorized to receive the claim did not advise as the rule **requires**, "in writing of the reasons for such disallowance." The Carrier officer replied as follows:

"Referring to your letter of May 22, 1974, file 74-M-184, requesting reinstatement of Agent Earl **J. Brammer** with all seniority rights and other rights accruing thereto **unimpaired** and pay for time lost. Your request for reinstatement as mentioned above is respectfully declined."

The denial of the claim by the Carrier does not advance any **reason** whatsoever for disallowing the claim. **The** language of Rule 47-A is clear, unambiguous and mandatory; it does not stipulate any exceptions whatsoever. It is clear that the Carrier did not meet its obligation pursuant to Rule 47-A.

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 Agreement was violated.

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Claim **sustained.**

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

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1977.