

NATIONAL RAILROAD ADJUSTMENT BOARD

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THIRD DIVISION

Award number 23212  
Docket Number CL-22678

Dam E. Eischen, Referee

PARTIES TO DISPUTE: ( Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
( me Lake Terminal Railroad Company

STATEMENT OF MM: Claim of the System Committee of the Brotherhood  
(GL-8686) that:

1. The Carrier violated the agreement it made with the Brotherhood under date of December 7, 1976, when It failed and refused to apply Award lb.22019 (Referee James F. Scearce) of the Third Division of the National Railroad Adjustment Board to the claim of Clerk A. Shamblin identified as Case L-3043, which was being held in abeyance pending the decision of the Board in the dispute which resulted in Award No. 22019.

2. The Carrier shall now be required to apply Award No. 22019 to the claim of Clerk A. Shamblin, identified as Case L-3043, and compensate Clerk A. Shamblin in accordance therewith.

OPINION OF BOARD: Carrier and the Organization agreed in December 1976 to handle certain pending claims in accordance with an understanding set forth - the Carrier relates Director's letter Of December 7, 1976, as follows:

"Dear Mr. Bauer:

This has reference to your telephone conversation with Mr. V. F. Musial of my office on December 6, 1976, at which time you requested that the following cases:

CLK-12-75 - Denied by letter dated December 2, 1975  
CLK-13-75  
m-14-75  
CLK-15-75

CLK-16-75 - Denied by letter dated January 20, 1976  
m-17-75

"CLK-28-76 - Denied by letter dated November 10, 1976  
CLK-29-76  
m-30-76  
m-31-76  
CLK-32-76  
CLK-33-76  
CLK-34-76  
CLK-35-76  
CLK-36-76  
CLK-38-76  
CLK-39-76

be held in abeyance pending the decision in similar claims being submitted to the Third Division, National Railroad Adjustment Board.

I am agreeable to holding the above referred-to cases in abeyance pending the decision in the dispute covered by International President, Fred J. Kroll's letter of intent to the Third Division, N.R.A.B. dated December 1, 1976, with the understanding that, should the Board erroneously sustain or compromise the dispute covered by Mr. Kroll's December 1, 1976 notice of Intent, the above enumerated claims would be screened by us for the purpose of eliminating any claims for improper dates, amount of claim, etc., and to otherwise conform the disposition of the above claims to the award of the Board.

Yours truly,

signed:

R. B. McGinley  
Director of Labor Relations"

The lead case was heard and sustained by the Board - Award 22019 (Referee Searw). Thereafter, the Organization presented for payment the remaining claims held in abeyance per the December 7, 1976 letter. Carrier paid several of those claim on the basis of Award 22019 but declined to pay the instant claim on grounds that it was distinguishable. The Organization then filled the instant claim, the gravamen of which is that Carrier "renege" upon or violated the understanding set forth in the letter of December 7, 1976. That Dispute, as Carrier correctly points out, was

never handled on the property in accordance with Circular No. 1 prior to the appeal to this Board. Accordingly we shall dismiss the present claim for lack of jurisdiction. It should be noted that in so doing we do not reach the merits of this claim i.e. whether Carrier had the right under the December 7, 1976 Agreement to weed-out L-3043. Nor do we reach the underlying dispute regarding the merits of L-3043 per se.

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 Employee 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 was not handled as required by NRAB Circular No. 1.

A W A R D

Claim dismissed for lack of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1981.