NATIONAL RAILROAD ADJUSTMENT BOARD

**Award Number 25110**

THIRD DIVISION Docket Number CL-25141

John E. Cloney, Referee

**PARTIES TO DISPUTE:** (Brotherhood of Railway, Airline and Steamship Clerks, ( Freight Handlers, Express and Station Employes (Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9798) that:

1. Carrier violated the effective Clerks' Agreement when, effective June 7, 1982, it transferred all commuter input/output duties from South Chicago, Illinois to Gary, Indiana without agreement with the Employes;

2. Carrier shall now compensate Mr. J. D. Hairston and/or his successor or successors in interest; namely, the senior furloughed employe for eight (8) hours' pay at the pro rata rate of an Input/Output Technician assignment commencing on June 7, 1982, and continuing for each and every Monday through Friday thereafter that a like violation exists.

OPINION OF BOARD: Prior to July, 1969 the Carrier maintained a car record system at each of four installations - South Chicago, Illinois; Kirk Yard, Gary, Indiana; Gary Indiana Mill Yard and Joliet, Illinois. The system was operated by clerical employes key punching cards from source documents dealing with car locations, etc. at the individual sites.

In March, 1969 the Carrier notified the Organization of its intention to establish a computerized information and car control system at a Computer Center to be located at Joliet, Illinois effective August 1, 1979.

Thereafter the parties negotiated an agreement dated July 23, 1969 which states in part that certain new positions were to be established at these locations which would

> "...perform only such work on the respective Seniority Districts and Locations as was previously performed on the positions to be abolished in the corresponding Seniority Districts and Locations under Section 6 hereof".

The new system, when placed in effect required employes known as Input-output Technicians (I.O.T.) to operate keyboards to feed information into a central computer. The Organization contends this system was similar to the previous system in that the information originating at a specific location was input at that location and reports created for each location were generated at that location only.

On May 27, 1982 the Carrier issued a bulletin abolishing the only IOT position at South Chicago effective June 4, 1982. At the same time the Carrier installed machines at South Chicago, Illinois and Kirk Yard, Gary, Indiana which permit transmission of facsimile copies of documents. Since then employes of various classifications use the machines to transmit data to Gary, Indiana at which point IOTs feed the data, including that formerly handled at South Chicago into the computer system. Further if information is necessary in South Chicago it must be requested by phone from Gary. Thus the Organization argues work previously performed at South Chicago has been transferred to Gary without negotiation or notice. According to the Organization this violates Rule 5 of the Basic Agreement which states:

> "When positions or work in one office or department located in one city are to be transferred to another office or department in another city in the same seniority district, conferences will be held at least ninety (90) days in advance with the General Chairman prior to the transfer for the purpose of endeavoring to negotiate an agreement to cover, so that employees affected may be given proper consideration."

In the Organization's view the Agreement of July, 1969 quoted earlier modified certain portions of the February, 1965 Agreement and limits employes to performing only such work at these locations as was previously performed there, but Rule 5 remains unaffected.

The Carrier notes the South Chicago work load depends upon the steel industry. As a result of decline in that industry the clerical positions at South Chicago have fallen from more than 25 in 1979 to one, with the last IOT position being abolished as alleged on June 4, 1982. Contrary to the Organization, the Carrier claims that since the inception of the present system in 1969, information on cars and trains has been input or retrieved by IOTs without regard to where the equipment was physically located and further claims this was with the full knowledge and consent of the Employes. In support of this position the Carrier submitted seven statements from employes who had worked in or supervised (or both) the positions for several years. These are all to the effect that no area limitations were ever considered applicable under the system and it was common practice and knowledge that the most expeditious way was to be chosen to input data ever since the system was introduced. In view of this evidence the Carrier argues the claim is barred by laches. The Carrier further contends the National Job Stabilization Agreement of February 7, 1965 supercedes Rule 5.

In the opinion of this Board it is not necessary to reach the question of Rule 5. The evidence establishes to our satisfaction that since the inception of the system more than fifteen years ago, IOT work has indeed been performed interchangeably. The evidence further establishes this was on an open and continuing basis. Accordingly the claim was not timely filed and is barred by the doctrine 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 Employes involved in this dispute are respectively Carrier and Employes 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.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1984.

LABOR MEMBER'S DISSENT TO
AWARD NO. 25110, DOCKET NO. CL-25141
(REFEREE CLONEY)

---

In this instance, the majority opinion has ignored the question at issue as to whether or not the July 23, 1969 Agreement (Supplement No. 10) negotiated pursuant to the February 7, 1965 National Stabilization Agreement contained specific language not covered by the February 7, 1965 Agreement and whether or not those specific provisions must be viewed as written and thus accordingly adhered to. It was clearly shown in the record before this Board that the Carrier failed to adhere to those provisions as well as Rule 5 of the basic Agreement which precluded the action taken by them.

Demonstrated was the fact that the Carrier unilaterally and without advance notice, in violation of the Agreement, (Rule 5 and Supplement No. 10), transferred the work of an abolished position at South Chicago, Illinois to Gary, Indiana. It was further shown that Rule 5 of the Agreement is in full force and prohibits such unilateral action.

Rather than rendering a decision based upon the merits, the majority opinion has concluded that the claim was not timely filed and is barred by the "doctrine of laches." That conclusion is illogically based upon the requested statements from the Director of Labor Relatons of seven (7) subordinate Carrier Officers.

This decision fails to take into consideration the unrefuted fact that in those instances whenever the Employes detected a violation of the Agreement appropriate claims were filed. It additionally fails to recognize that several of these claims were settled on the property sustaining the Employes position. To conclude that the "doctrine of laches" applies is in absolute error. Essentially, the conditions which must be present to conclude such would include knowledge coupled with unreasonable delay, change of position, lack of diligence in making a claim or moving for the enforcement of a right, undue, unexcused, unexplained or unreasonable delay in assertion of rights. None of these factors were present or existed.

The dismissal of this claim is palpably wrong.

William R. Miller -Labor Member

Date November 28, 1984