

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(Boston and Maine Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10140) that:

1. Carrier violated the Master Implementing Agreement dated October 17, 1984, when it failed or refused to serve a proper advance notice of ninety (90) calendar days when a change of residence is required to an affected employee, when it illegally abolished the position of Chief Clerk formerly occupied by Ms. J. D. Johnson at East Deerfield, Massachusetts, and illegally transferred the work thereof to North Billerica, Massachusetts, a distance of eighty-five (85) miles.

2. Carrier shall now be required to compensate Clerk J. D. Johnson eight (8) hours pay per day at the rate of \$14.11 per hour effective Friday, January 17, 1986, and each and every work day thereafter until position is restored and proper notification received.

3. Carrier further violated the Working Rules Agreement (Rule 44) when the highest officer of the Carrier designated to handle such disputes failed to disallow the instant claim within the time limits established in the Rule."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was the occupant of the Chief Clerk position at East Deerfield, Massachusetts. On January 14, 1985, the General Chairman was notified by Carrier that the Chief Clerk position would be moved to North Billerica, Mass. The change was to become effective April 15, 1985. The ninety-day notice of change, as required by Article II, Section 1 of the Master Implementing Agreement of October 17, 1984, was adhered to by Carrier.

As is her right under the Implementing Agreement (Article III, Section 1(c)), Claimant elected to take a separation allowance rather than move. She so notified Carrier of this option on January 28, 1985. On April 11, 1985, four days before the effective date of the transfer of Claimant Carrier cancelled the transfer order. On January 9, 1986, Carrier notified Claimant that her position as Division Chief Clerk, East Deerfield, would be abolished on January 16, 1986. Claimant protested the abolishment of her job on January 9, 1986. Her Claim was denied at each level of appeal, until it reached Carrier's highest labor relations official on April 11, 1986. Carrier did not respond to the Organization's final appeal. The Organization thereafter submitted the Claim to this Board for final adjudication.

In its Submission to the Board, Carrier took the position that the Organization's Claim that alleged a violation of the Master Implementing Agreement dated October 17, 1984, was misplaced. The dispute if, it does exist, Carrier argues, should be handled under New York Dock Conditions and not presented to this Board.

This Board has carefully reviewed the record of this case. We are not persuaded by Carrier's argument that this Board does not have jurisdiction in this case. The Claim by the Organization has alleged a violation of the October 17, 1984 Implementing Agreement and disputes that arise under that Agreement fall under the jurisdiction of this Board.

This Board is also compelled by this record to conclude that Carrier did not fulfill its obligation of responding to the Organization's appeal to its highest official. Failure to respond or conference the Claim has resulted in a forfeiture of Carrier's position and the instant Claim must be allowed as submitted on this time limit violation.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1990.