

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29870
Docket No. CL-30238
93-3-91-3-702

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International
(Union
(The Atchison, Topeka and Santa Fe Railway
(Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10641) that:

CLAIM NO. 1

- (a) Carrier violated the current Clerks' Agreement at Topeka, Kansas, on May 15, 1990 when it improperly permitted an Excepted Employee having no proper seniority in the Revenue and Customer Accounting Department Seniority District to displace clerical employee Mr. W. E. Lewis from Position No. 6640, and
- (b) Carrier shall now be required to reinstate Claimant Lewis to Position No. 6640, and Carrier shall also be required to reinstate to their former position all other clerical employees subsequently affected in the improper chain of displacements as a result of this violation, and
- (c) Carrier shall further be required to compensate Claimant Lewis for any and all wages and wage equivalents lost as a result of the improper displacement as well as all other clerical employees subsequently affected in the improper chain of displacements.

CLAIM NO. 2

- (a) Carrier violated the rules of the current Clerks' Agreement at Topeka, Kansas, on June 4, 1990 when it improperly permitted an Excepted Employee having no proper seniority in the Disbursement Account Department Seniority District to displace clerical employee Ms. C. J. Lancaster from Moving and Expense Account Draft Clerk Position No. 6159, and

- (b) Carrier shall now be required to reinstate Claimant Lancaster to Position No. 6159, and Carrier shall also be required to reinstate to their former position all other clerical employees subsequently affected in the improper chain of displacements as a result of this violation.
- (c) Carrier shall further be required to compensate Claimant Lancaster for any and all wages and wage equivalents lost as a result of the improper displacement as well as all other clerical employees subsequently affected in the improper chain of displacements.

CLAIM NO. 3

- (a) Carrier violated the rules of the current Clerks' Agreement at Topeka, Kansas, on June 25, 1990 when it improperly permitted an Excepted Employee having no proper seniority in the Disbursement Accounting Department Seniority District to displace clerical employee Ms. Betty L. Ward from Material Payment Clerk Position No. 6118, and
- (b) Carrier shall now be required to reinstate Claimant Ward to Position No. 6118, and Carrier shall also be required to reinstate to their former positions all other clerical employees subsequently affected in the improper chain of displacements as a result of this violation.
- (c) Carrier shall further be required to compensate Claimant Ward for any and all wages and wage equivalents lost as a result of the improper displacement as well as all other clerical employees subsequently affected in the improper chain of displacements."

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 employee 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.

A threshold issue involved in this matter is a timeliness argument raised by Carrier. The three claims all involve displacements. The first occurred on May 15, 1990, the second on June 4, 1990, and the third on June 25, 1990. The Organization filed its initial claim on each of the three displacements on September 10, 1990, which Carrier contends is beyond the sixty day time limit provided in Rule 47. The Organization maintains that these are continuing claims which may be filed at any time.

It is the Board's view that the three claims involved in this docket do not satisfy the test for a continuing claim. Each of the three are based on a single event, a displacement. It is the displacement which the Organization contends was in violation of its Agreement. The Rule requires that claims be filed within sixty days of the date of occurrence. The three claims involved in this docket were not filed within sixty days of the date of occurrence. They are barred by the language of Rule 47. (See Third Division Awards 14131, 12984, 14450, 29353 and 27327.)

While dismissal of these claims is required, we do note that our review of the merits reveals that the Organization has failed to carry its burden of proof and the claims would have been denied on the merits had we reached them.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.