Award No. 11127
Docket No. CL-10788

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY AND THE LAKE ERIE AND EASTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. Carrier violated the rules of the Clerks' Agreement beginning June 25, 1957 when they abolished the position of Cashier at Fallston, Pennsylvania Freight and Ticket Office, and assigned the work of that position to persons not covered by the Clerks' Agreement, and

2. That the carrier be required to pay claim for one day's pay for June 25, 1957 and each subsequent date, Monday through Friday, at the rate of the abolished position of Cashier, Fallston Freight and Ticket Office, plus punitive pay for overtime or relief days when such time was worked to perform clerical duties by persons not covered by the Clerks' Agreement, to be settled on the following basis:

(a) Claim is for all wage loss suffered by Clerk C. E. Lenhult, who held Cashier position at time of abolishment.

(b) Claim for the difference between the wage loss suffered by Clerk Lenhult and the rate of the abolished Cashier position for the senior qualified available clerk.

EMPLOYES' STATEMENT OF FACTS: Effective after the completion of tour of duty June 24, 1957 the position of Cashier at Fallston Freight and Ticket Office was abolished.

On June 25, 1957 the work of that position was assigned to the Freight and Ticket Agent, an employe not covered by the Clerks' Agreement.

Fallston Freight and Ticket Office shall hereinafter be referred to as "Fallston" and the position of Freight and Ticket Agent shall hereinafter be referred to as the "Agent."

the authorized representatives of the employe, and we believe they are fully aware of our position as herein set forth.

(Exhibits not reproduced)

OPINION OF BOARD: It is necessary first to consider and dispose of several procedural issues raised by the Carrier.

First, Carrier contends that the claim should be dismissed because Claimant Lenhult suffered no wage loss because he "exercised his seniority and worked various other positions under the Clerks' Agreement from June 25, 1957, when his position was abolished at Fallston, until May 12, 1958, on which latter date he was awarded the position of Agent at West Pittsburgh which latter position carries a higher rate than the abolished position and comes under the scope of the Agreement with the Order of Railroad Telegraphers." This is not a procedural defect. It goes only to the question of damages, if any, for Claimant Lenhult if the Board sustains the claim on its merits.

Second, Carrier argues that paragraph 2(b) of the claim is a general or blanket claim on behalf of an unnamed claimant and is barred under paragraph (a), Item 1 of Rule 43 . . ." This Rule, in part, says:

> "All claims or grievances must be presented in writing by or on behalf of the employe involved. . . ."

Paragraph 2(b) of the Statement of Claim states:

> "Claim for the difference between the wage loss suffered by Clerk Lenhult and the rate of the abolished Cashier position for the senior qualified available clerk."

While there may be some conflicting Awards on this subject, we believe that the most current and best considered opinions hold that the Railway Labor Act and the procedural provisions of the Agreement are best effectuated if the claimants can be easily and readily ascertained and identified. In Award 10379 (Dolnick) we said:

> "The Organization and the Carrier are both aware how and where Claimant's identity can easily be ascertained. It is not the purpose of the Board to construe the language of a contract strictly upon the literal meaning of the words. The purpose and intent of the parties must be considered and applied to the language in the Agreement. It is sufficient that the parties know on whose behalf the claim is filed, whether the individual or individuals are named or are readily identifiable. The claim in this case complies with this intent."

The same rule applies here. The individual or individuals for whom the claim is filed can be easily ascertained.

The issues before this Board must be considered on its merits. The facts are not in dispute.

As of June 24, 1957, the entire work force at Fallston, Pennsylvania, consisted of an Agent under the Telegraphers' Agreement and a Cashier under the Clerks' Agreement. Effective at the completion of tour of duty of June 24, 1957, the position of Cashier was abolished and the remaining clerical duties were transferred to the Agent.

The Employes contend that the Carrier violated the Agreement when it unilaterally transferred the Cashier's position and work to the Agent. Specifically, the Employes argue that the Carrier violated Rule 1, particularly paragraph (e) which reads as follows:

> "Positions or work within the scope of this agreement belong to the employes covered hereby and shall not be removed therefrom without negotiations and agreement between the parties signatory thereto."

It is true that the Scope Rule (Rule 1) does not describe the duties and responsibilities of the positions therein covered. We have consistently held that under such circumstances custom, practice and tradition of the work performed shall be ascertained.

In this case the work of the Cashier was performed almost exclusively by that employe. It was not an incidental duty to his primary responsibility and work assignment. His primary function as Cashier was not totally eliminated, nor was it transferred to another employe covered under the Clerks' Agreement. His primary function and duties were transferred to the Agent who was covered by the Telegraphers' Agreement.

These facts distinguish this case from those contained in the numerous Awards cited by the Carrier.

In Award 5619 (Robertson) we said that when the Scope Rule does not describe work as such that the Board must ascertain the "custom, tradition and practice to determine the work reserved to the classifications of employes listed in the Scope Rule." In that case the "checking and punching clocks at the storeroom and oil house locations was not performed exclusively by clerks. **It was performed by both the police and the clerks as incidental to their regular duties.**" (Emphasis ours). That is not the situation here. The issue and facts were the same in Award 9576 (Johnson) also cited by the Carrier.

In other Awards cited by the Carrier where we denied claims involving the abolishment of positions and where some of the work was transferred to employes not covered by the applicable Agreement, the work of the employe whose position was abolished was not performed exclusively by him but was done interchangeably with the Agent as incident to his primary duties. Among such cited Awards is 10515 with the same Referee involved in the case now before us. In that Award the Telegraphers' Organization requested that the Carrier establish a printer-teletype position under the scope of their Agreement and fill that position with an employe covered by that Agreement. We said:

> "The evidence in the record shows that employes represented by the Organization never worked as a teletype machine operator in Carrier's Passenger or Traffic Office in Houston. The installation of the teletype machine did not deprive any telegrapher of work in Houston. The teletype machine was operated by a clerk in Houston for nearly five years before the Organization requested the right to represent the employe operating the teletype machine."

This Award as well as Awards 9219 and 9220 (Hornbeck), 9821 (Larkin), 9971 (Larkin), 10457 (Wilson), 9250 (Stone), 6077 (Begley), 8161 (Bailer), 7031 (Carter), 7954 (Cluster) and 2138 (Thaxter) are easily distinguishable.

It is true that the Agents at Fallston sold tickets and may have performed other clerical duties. And we agree with the Carrier when it says "that the work involved in this dispute is incidental to the performance of the Agent's regular duties. . ." The distinguishing factor is that the Agents' primary duties were not clerical and selling tickets. The position of Cashier was by custom, practice and tradition the primary duty of the employe under the Clerks' Agreement. The Cashier performed no other work. If passenger tickets were no longer sold at Fallston and no Cashier was required, Carrier had every right to abolish the position. But that is not the case.

Carrier relies heavily on Awards 12 and 13 of Special Board of Adjustment No. 122 and states that the claim should be denied on the basis of such Awards. Both Awards are brief. The facts are not discussed in detail nor do they consider and distinguish the many Awards on the subject. We agree that Special Boards of Adjustment are "tribunals of coordinate jurisdiction with the Divisions of this Board." We also agree that the Awards of Special Boards of Adjustment should be given equal consideration with the Awards of Divisions. They are entitled to no more nor less consideration than other Awards on the same subject matter.

We are inclined, rather, to follow our Awards 8500 (Daugherty), 8234 and 8079 (Lynch) and 7372 (Carter). In Award 8500 we said:

> "When the Carrier abolished Clerical Position No. 196, at least some of the work previously associated exclusively with said position remained to be performed; and after said abolition it was performed by the Agent. The work of the clerical position was not wholly abolished; at least some of it was transferred to the Agent's position, i.e., it was removed from the scope of the Clerks' Agreement and placed under the scope of the Telegraphers' Agreement. Then, under this Board's ruling in numerous Awards . . . interpreting this same Rule 1 (e) or similar rules and holding that work is the essence of positions, said Rule prohibited the Carrier from acting as it did in the instant case."

In Award 8234, we said:

> "A covered position having been abolished, and in the absence of any proof that 'work normally attached to Position 219' was assigned to an employe or employes covered by the Clerks' Agreement, a sustaining Award is in order."

The facts in Award 7372 (Carter) are comparable to the facts in the dispute before us. The Rule involved was also comparable to Rule 1(e) of the Clerks' Agreement. We said:

> "Several awards of this Division have held that rules similar to Rule 1 (b) require that the work of a position may not be removed from the application of the agreement except by agreement or mediation."

The distinguishing characteristics of the facts in this dispute are (1) that the Cashier's work was the primary responsibility of the employe covered by the Clerks' Agreement, (2) that ticket sellers are specifically mentioned in the Scope Rule, (3) that selling tickets by the Agent was only incidental to his primary duties, (4) that selling tickets and the Cashier's position was associated exclusively as being covered by the Clerks' Agreement and was so

established by custom, practice and tradition, and (5) that such work was not totally eliminated and that the remaining functions were not assigned to employes covered by the Clerks' Agreement.

The record shows that Claimant Lenhult exercised his seniority and worked various positions under the Clerks' Agreement from June 25, 1957 to May 12, 1958. On the latter date he was awarded the position of Agent at West Pittsburgh which is covered under the scope of the Telegraphers' Agreement. He has been continuously employed since June 25, 1957 and suffered no wage loss from June 25, 1957 to May 11, 1958. Claimant Lenhult still holds the position of Agent at West Pittsburgh. We accordingly hold that claims 1 and 2 (b) should be sustained and claim 2 (a) should be dismissed.

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 Carrier violated the Agreement.

AWARD

Claim 1 is sustained.

Claim 2 (a) is dismissed.

Claim 2 (b) is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of February, 1963.

DISSENT TO AWARD NO. 11127, DOCKET NO. CL-10788

The majority in Award 11127 correctly dismisses Claim 2 (a). It commits error, however, in sustaining Claim 1 and Claim 2 (b).

In the first place, the issue involved in Claim 1 was not a novel one under the agreement between these same parties. Similar claims were denied in Awards 12 and 13 of Special Board of Adjustment No. 122 involving these same parties, agreement and rule. Therein, the Referee held as follows:

> "Clearly, when the business decline reached the point where the Agent was capable of handling the work alone, without the assistance of an additional clerk, the dimensions of the clerical job completely shrivelled up and ceased to exist."

In the instant case, notwithstanding the majority's recognition that Special Boards of Adjustment are "tribunals of coordinate jurisdiction with the Divisions of this Board", and without holding or showing these Awards on this same Carrier to be palpably wrong, the majority herein elected to follow certain Awards involving other Carriers. In Award 7967 we held:

> "The existence of Award 6678 makes relevant here what this Board has previously said, to the effect that unless palpably wrong this Board is never warranted in overruling, in a subsequent dispute between the same parties, a previous award construing the identical provisions of their contract. See Awards 2517, 2526, and 6833."

Many other precedent Awards were cited on behalf of Carrier which also warranted denial of Claim 1 and concerning which the majority herein recognizes—

> "In other Awards cited by the Carrier where we denied claims involving the abolishment of positions where some of the work was transferred to employes not covered by the applicable Agreement, the work of the employes whose position was abolished was not performed exclusively by him but was done interchangeably with the Agent as incident to his primary duties. * * *"

In the instant case, after agreeing—

> "It is true that the Agents at Fallston sold tickets and may have performed other clerical duties. And we agree with the Carrier when it says 'that the work involved in this dispute is incidental to the performance of the Agent's regular duties. . . .'"

so recognizing that such work was not performed exclusively by the Cashier, the majority herein introduces a new factor (primary duties) into the case, alleging—

> "The distinguishing factor is that the Agents' primary duties were not clerical and selling tickets."

and adds—

> "The position of Cashier was by custom, practice and tradition the primary duty of the employe under the Clerks' Agreement. The Cashier performed no other work. * * *"

It is clear that the majority in Award 11127 cites no logical distinction which warranted its failure to follow such precedent Awards and to deny Claim 1.

In respect of Claim 2 (b), the majority herein states—

> "While there may be some conflicting Awards on this subject, we believe that the most current and best considered opinions hold that the Railway Labor Act and the procedural provisions of the Agreement are best effectuated if the claimants can be easily and readily ascertained and identified. * * *"

It hereupon cites Award 10379 in which this same Referee also participated.

In the first place, Award 10379 is not "the most current" Award interpreting the language—

> "All claims or grievances must be presented in writing by or on behalf of the employe involved. * * *"

Awards 10458, 10730, 10944, 11038 and 11066 are more current Awards, all of which dismissed claims under identical provisions.

Furthermore, Award 10379, supra, erroneously held as follows:

> "* * * It is not the purpose of the Board to construe the language of a contract strictly upon the literal meaning of the words. The purpose and intent of the parties must be considered and applied to the language in the Agreement. * * *"

In Award 11068 we quoted and confirmed the following from Award 6856:

> "A party is not permitted to go behind his written agreement and offer special knowledge of the intent of plain provisions. It is conclusively presumed that all such matters were considered and incorporated in or left out of the agreement to the extent the written contract shows. * * * The meanings of written contracts are not ambulatory and subject to undisclosed or rejected intentions of either of the parties."

In Award 4386 we held:

> "* * * What motivated the Carrier and the Organization in entering into the letter agreement is not important here. The Carrier has a clear right to insist upon the letter agreement being carried out as made. This Board has no more right to destroy agreements than it has to create them. No basis for an affirmative award exists."

In addition, Award 11127 dismisses Claim 2 (a) because Claimant Lenhult "suffered no wage loss from June 25, 1957 to May 11, 1958." Claim 2 (b) should have been dismissed for the same reason because the record shows that Lenhult suffered no wage loss after May 11, 1958, and "the wage loss suffered by Clerk Lenhult" is controlling over Claim 2 (b).

For the foregoing reasons, among others, we dissent.

/s/ W. H. Castle

/s/ P. C. Carter

/s/ R. A. Carroll

/s/ D. S. Dugan

/s/ T. F. Strunck

LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD NO. 11127, DOCKET NO. CL-10788

It is unfortunate that the Dissenters did not see fit to give us the benefit of the "Many other precedent Awards cited on behalf of Carrier which also

warranted denial of claim 1," by citing them in their Dissent so that we could show the difference between the pertinent facts and governing rules there and here. Their failure to cite such awards in support of this untenable contention conclusively shows that none of the so-called precedent awards contained a rule similar to confronting Rule 1(e), reading as follows:

> "Positions or work within the scope of this Agreement belong to the employes covered hereby and shall not be removed therefrom without negotiation and agreement between the parties signatory thereto."

If the Dissenters have desired to cite precedent Awards, i.e., those that were based upon similar facts and rules, they would have mentioned Third Division Awards 3563, 5785, 5790, 6141, 6357, 6444, 6937, 7047, 7048, 7129, 7372, 8079, 8234, 8500, 9416, all of which have sustained the Employes' claim under similar circumstances. In fact, this Division, with a few exceptions (where the circumstances were distinguishable), has consistently held that rules similar to Rule 1(e) were violated upon the unilateral removal of positions or work, as here.

By relying on Awards 12 and 13 of Special Board of Adjustment No. 122, the Dissenters are attempting to impress upon us the untenable proposition that a denial award must be followed regardless of the facts, or lack thereof, upon which they were based. A review of Awards 12 and 13 will show the "Statement of Claim," "Findings" and "Award." There is no finding of facts included therein; merely the conclusions of the Referee who wrote the Awards that are based on assertions and unsupported conclusions. In 196 Mo. 550, the Court ruled: "Presumptions may be looked upon as the basis of the law, flitting in the twilight but disappearing in the sunshine of actual facts."

In Award 2670, Referee Shake said:

> " * * * . Precedents must always be weighed and evaluated in the light of the facts upon which they are predicated. * * * ."

It is, therefore, clear that before an Award can be considered as a precedent, something more must be present than that it involved the "same parties, agreement and rules." It is hard to understand how the majority could have held or showed Awards 12 and 13 to be palpably wrong when we do not know the facts upon which they were predicated.

In respect to Claim 2 (b), the Dissenters inject again their outworn and repeatedly rejected contention that Claimants must be specifically named under Section 1(a), Article V, August 21, 1954 Agreement. The Board has repeatedly rejected this proposition by restating the controlling principle that Claimants need not be named as long as they are readily identifiable. Awards 3763, 4821, 4999, 5078, 5107, 5117, 5436, 5630, 5700, 5755, 5923, 6100, 6167, 6262, 7622, 7713, 7859, 7915, 8506, 8526, 8767, 9205, 9248, 9333, 9416, 10092, 10122, 10195, 10229, 10533, 10675, 10871. A review of these Awards will show that they cover three types of situations: First, where there are no agreements similar to Article V; Second, where there were time limit rules similar to Article V; and Third, those that involved Article V. So, it is self-evident that this same untenable plea has been made by Carrier over a long period of time and has been repeatedly rejected.

In Award 10871, Referee Hall reaffirmed the controlling principle, when he ruled:

"It has been strenuously urged by the Carrier that since the Claimants were not identified by name the Employes have not complied with Article V, Section 1(a) of the time limit rule and consequently the claim is not properly before this Board. This point was not raised on the property by the Carrier. **In any event it lacks merit as the identity** of the Claimants, though not **specifically mentioned, is readily ascertainable.** See Award 9205 (Stone) and Award 10675 (Ables). The matter of determining the senior qualified idle employe available on each of the days for which the claim is made is only a matter of detail in checking the seniority records. (Emphasis ours.)

Award 11127 properly rejected the Carrier Members' contention that Claimants must be specifically named in accordance with the above cited precedent Awards."

A review of the above cited Awards will show that the Dissenter's position on "unnamed Claimants" have been denied before and after the adoption of Article V, August 21, 1954 Agreement. Consequently, it is presumed that this principle was well understood by the parties when they wrote and agreed to the language in Section 1(b), Article V, (Award 11068) as it would have been an easy matter to have incorporated therein language requiring that claimant be specifically named, had they so intended. The English language contains sufficient words to have done so.

A review of Awards cited by the Dissenters as the "more current Awards" on this subject will show that they do not change the well established principle enunciated by the Board.

Award 10458 (Wilson) held that the Claimants are not specifically named **nor are they easily and clearly identifiable in this case.** Award 10730 does not lend support to the Dissenters' contentions. Award 11038 rules that: "It is clear that rule (Article V) does not specifically require that the employe involved must be named" and then finds that Claimants were not readily identifiable there. Award 10944 held that Claimants were too general, vague, indefinite, and uncertain. Award 11066 held that: "the Claimants are neither named nor are they readily identifiable." If these awards are considered "precedent Awards" by the Dissenters, it is clearly evident how they reached the illogical conclusions contained in their Dissent.

The assertions contained in the penultimate paragraph of their Dissent is so absurd that it deserves no reply. However, in Award 10730, cited by them, Referee Ables ruled:

"Our judgment is that this Board may make any award within the limits of the claim that it thinks is equitable. This is based on the view that Congress did not intend to, and did not, limit the powers of the Board to 'adjust' the differences of the parties with respect to the subjects over which it has jurisdiction."

Award 11127 properly disposes of this dispute.

/s/ J. B. Haines

J. B. Haines

Labor Member

CARRIER MEMBERS' REPLY TO LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD NO. 11127, DOCKET NO. CL-10788

In recognizing that the involved work was not performed exclusively by Clerks but also was performed by the Agents at Fallston, Award 11127 gave sound reasons for following Awards 12 and 13 of Special Board of Adjustment No. 122 involving the same parties, agreements and rules as here, rather than following Awards involving other railroads. Lack of knowledge of the facts by the majority, as admitted by the Labor Member in his Answer to the Dissent of the undersigned, is no excuse for not doing so particularly when the circumstances and facts involved in Awards 12 and 13, supra, were brought out in the record herein and argued.

The Labor Member cites many Awards as allegedly supporting allowance of the claim on behalf of unnamed claimants. However, only a dozen so cited involved Article V of the August 21, 1954 Agreement, and one of the latter (Award 10092) denied claims for "all others affected," and the names of claimants in another (Award 10533) had been furnished. None involved claims for "the senior qualified available clerk" as in the instant case. It also is significant that subsequent Awards 11156, 11229, 11230 and 11284 did not follow Award 11127 in this respect.

/s/ W. H. Castle

/s/ P. C. Carter

/s/ R. A. Carroll

/s/ D. S. Dugan

/s/ T. F. Strunck

ANSWER TO CARRIER MEMBERS' REPLY TO LABOR MEMBERS' ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD NO. 11127, DOCKET NO. CL-10788

A review of the record in this case shows that no evidence of a probationary character was introduced by either party showing the facts upon which Awards 12 and 13, Special Board of Adjustment No. 122, were based, regardless of the Dissenters' contentions. The Carrier claimed that the disputes were similar to the instant dispute and asserted that the work load had declined at both stations in the confronting case and Award 12. Award 13 did not involve the abolishment of a clerical position and the removal of clerical work from the scope of the Agreement, as here. However, the Refereee there held that the "disposition of this dispute (Award 13) is governed by Award No. 12, * * * ." Apparently, the Referee was unable to distinguish the governing principles involved in Awards 12 and 13 and for that reason, committed grievous error in denying the claim in Award 12, as it is palpably erroneous, if the assertions of the Carrier are to be believed. See the many awards covering similar situations and rules in Awards cited in my "Answer" to the Carrier Members' Dissent to this Award.

Having defended itself upon the basis of Awards 12 and 13, the burden of proving such defense rested upon the Carrier and not upon the majority of the Members of this Board, as the Dissenters would have us believe. Regardless of this, however, the fact that the majority refused to follow Awards

12 and 13 by arbitrarily denying the confronting claim, conclusively shows that we did not consider them of any value whatever as precedents in the confronting case. Carrier Members are merely expressing their disappointment in the Board's refusal to be misled by such trivial argumentations.

Since the Adjustment Board was created by Congress by amending the Railway Labor Act in 1934, most Carriers and their Representatives on the Board have attempted to evade their obligation under the Act, of "maintaining agreements" with their Employes, by raising numerous untenable technical objections to the proper adjudication of disputes on their merits by the Board. The plea of "unnamed claimants" is only one of such objections. The Third Division has never ruled that Article V, August 21, 1954 Agreement required that the Claimant be named. It has followed the weight of authority and rejected such contentions where time limit rules were and were not involved and have so ruled on Article V. A review of the Awards cited by the Dissenters will conclusively show that they lend no support to their contentions. They merely hold that Claimants were too "vague or indefinite."

However, Awards 11229 and 11230, by Referee Sheridan, are clearly erroneous as they were dismissed because of an alleged procedural defect in the remedial part of the claim, while failing to render an award on the merits of the substantive claim presented by the Employes that their agreement was violated when Carrier removed work therefrom and contracted with a private contractor. It was only after the question of whether the Agreement under these circumstances had been violated, that the Referee was at liberty to determine whether the relief requested was proper. Therefore, it is clear that finding that "claimants involved is too vague and indefinite" before ruling on Item (1) of the claims, he was premature and the dismissal of the substantive claims was palpably erroneous. In Award 3256, Referee Carter put this issue in its proper perspective when he ruled:

> " * * * , it was not intended by the Railway Labor Act that its administration should become super-technical and that the disposition of claims should become involved in intricate procedures having the effect of delaying rather than expediting the settlement of disputes. **The subject matter of the claim,—the claimed violation of the Agreement,—has been the same throughout its handling.** The fact that the reparations asked for because of the alleged violation may have been amended from time to time, does not result in a change in the identity of the subject of the claim. **The relief demanded is ordinarily treated as no part of the claim * * * .**" (Emphasis ours.)

A review of Article V, August 21, 1954 Agreement, will show that nowhere therein is there a provision that requires that the "employes involved" be named, much less a provision that requires the dismissal of a claim where he is not so specified. In fact, the only time a claim will be "considered closed," or, "barred," is where there has been a failure to comply with the time limits therein specified. What the Carrier Members are here complaining about is the Board's refusal to add words to Article V in order that their untenable contentions may be sustained. In Award 11372, Referee Dorsey ruled, here pertinent, that:

> "Let us once and for all put to bed the oft presented argument that Article V, 1. (a) in the provision quoted, **supra**, requires that 'the employe involved' be named. The language of the provision cannot be so construed. Had the draftsmen of the provision so intended

they could easily have included such a specification. Instead, they used the language 'on behalf of the employe involved.' These chosen words, of the parties to the Agreement, cannot be qualified by this Board, on its own motion, amending the phrase by inserting the word 'named,' as a prefix, to the word 'employe.'

We interpret the phrase 'on behalf of the employe involved' to mean that the employe or employes 'involved' must be described in the claim with such particularity as to make his or their identity known to the Carrier under the circumstances prevailing. Carrier in its exhaustive brief captioned 'Claims for Unnamed Employes are Invalid' appears to recognize that this interpretation is sound."

It is therefore clear that the Dissenters' arguments are untenable and have been rejected repeatedly by the Board.

/s/ J. B. Haines

J. B. Haines

Labor Member

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 11127

DOCKET NO. CL-10788

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

NAME OF CARRIER: The Pittsburgh and Lake Erie Railroad Company and The Lake Erie and Eastern Railroad Company.

Upon application of the representatives of the Carrier involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Act, as approved June 21, 1934, the following interpretation is made:

The Award sustained Claim 1, dismissed Claim 2(a) and sustained Claim 2(b).

Carrier's interpretation of the Award is correct.

The Organization argues that sustained Claim 2(b) contemplates that furloughed employes who work intermittently as extra employes are the qualified available employes entitled to "one day's pay for June 25, 1957 and each subsequent date, Monday through Friday, at the rate of the abolished Cashier position . . . plus punitive pay for overtime on relief days when such time was worked to perform clerical duties by persons not covered by the Clerks' Agreement. . . ."

Carrier contends that "the senior qualified available clerk" from June 25, 1957, the starting date of the claim, to June 30, 1963, were C. A. Teerkes, C. E. Lenhult and K. J. Shipley. They alone are entitled to the difference between the rate of the abolished Cashier position and whatever they earned during the respective periods each of them were available.

The "senior qualified available clerk" could be a furloughed employe or an employe working in another position. Lenhult, Teerkes and Shipley were senior to the furloughed or extra clerks. Petitioner's original claim in 2(b) was "for the senior qualified available clerk". There is no ambiguity in this claim. The language is clear and can have only one meaning. It follows the language of the Agreement.

It may very well be that had the Cashier's position not been abolished between June 25, 1957 and June 30, 1963, employes other than Lenhult, Teerks and Shipley may have applied for the position when vacancies occurred, and may have been assigned thereto. But we have no way of making that

determination. The claim was filed on behalf of the "senior qualified available clerk". We are obliged to assume that Lenhult, Teerks and Shipley, as the senior qualified available clerks, would have made application for each vacancy of the Cashier's position as it occurred. We have no right to assume that they would not have applied and that a junior qualified available clerk would have been assigned.

Referee David Dolnick, who sat with the Division, as a member, when Award No. 11127 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1964.