

Award No. 15691
Docket No. CL-15153

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5680) that:

1. Carrier violated and continues to violate the Clerks' Rules Agreement when it removed work covered thereby and assigned it to outsiders holding no seniority or employe status in the Store Department Seniority District No. 118.

2. Carrier shall now be required to return the Chauffeur work which was a part of Position No. 5173 in connection with the transporting of employes to and from the Milwaukee Hospital and Shops, presently being performed by a contract carrier operating under the name of Yellow Cab Company, to Store Department employes in Seniority District No. 118.

3. Carrier shall now be required to compensate Employe Gordon Gunsolley, the regular occupant of Chauffeur Position No. 5173, his successor or successors if there be any, for an additional day's pay at the pro rata rate of Chauffeur Position No. 5173 for all subsequent days retroactive sixty (60) days from September 17, 1963 that the violation continues.

4. Reparation due employes to be determined by joint check of Carrier's payroll and/or other records.

EMPLOYEES' STATEMENT OF FACTS: Beginning in 1935, and continuing throughout the years, employes covered by the scope and application of the Clerks' Agreement have been assigned to and have performed the chauffeur work in connection with the ambulance service provided by the Carrier for its employes at the Milwaukee Shops who are injured or who otherwise require hospital attention or treatment. See copy of letter dated January 30, 1950 from Mr. J. A. Deppe, former Superintendent of Car Department, submitted as Employes' Exhibit A.

they have presented, the employes are contending is work exclusive to Chauffeur Position No. 5173, but which, in fact, is not work exclusive to Chauffeur Position No. 5173, or any other position within the scope and application of the Clerks' Agreement, as the Carrier will establish in its "Position."

It is significant that Chauffeur Position No. 5173, nor any other position within the scope and application of the Clerks' Agreement, has been abolished, or, in other words, neither claimant Gordon Gunsolley, as the occupant of Chauffeur Position No. 5173, or any other employe represented by the Clerks' Organization on this property has suffered any lost earnings.

Attached hereto as Carrier's Exhibits are copies of the following letters:

Carrier's Exhibit A - Copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of April 6, 1964.

Carrier's Exhibit B - Copy of Mr. Amour's letter to Mr. Gilligan under date of August 7, 1964.

Carrier's Exhibit C - Copy of Mr. Amour's letter to Mr. Gilligan under date of August 18, 1964.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier moves for dismissal of the Claim because it was not filed within 60 days from the date of the occurrence on which the Claim is based. Petitioner answers that the Claim is for a continuing violation. Each party relies on Article V of the August 21, 1954 Agreement; Carrier: Section 1(a); Petitioner: Section 3.

Paragraph 1 of the Claim alleges that Carrier violated the Agreement "when it removed work covered thereby and assigned it to outsiders."

Although the consequences or damages flowing from a violation of an agreement may accrue until a dispute is ultimately settled, the Claim is not for those reasons alone a continuing one as, for example, in a wrongful discharge case.

Carrier's action complained about herein took place only one time: June 24, 1963. Claim was not presented until September 17, 1963 — more than 60 days after date of occurrence upon which it is based. Carrier's motion to dismiss is granted.

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 was not timely filed as prescribed in Article V 1 (a) of the August 21, 1954 Agreement, and we are compelled to dismiss.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1967.