

Award No. 15997

Docket No. CL-16140

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

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

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5952) that:

(1) Carrier violated, and continues to violate, the Clerks' Rules Agreement at Savanna, Illinois when it established a position in the Superintendent's Office to perform work comparable to that of a Car Distributor and unilaterally assigned such work to an employee outside the scope and application of that Agreement.

(2) Carrier shall be required to bulletin this position to employees in Seniority District No. 32 at a rate of pay established by agreement between the parties.

(3) Carrier shall be required to compensate the successful bidder the difference in the rate of pay between what he would have earned had this position been bulletined in accordance with the Rules Agreement and the position held, retroactive 60 days from March 1, 1965 and for all subsequent days until the violation is corrected and the position is bulletined and assigned in line with the provisions of the Clerks' Rules Agreement.

EMPLOYEES' STATEMENT OF FACTS: Car Distributor positions, where such positions have been established and maintained, are positions fully covered by all rules of the Clerks' Agreement. The duties of such positions consist of distributing of equipment, preparing necessary reports, maintaining records and other related clerical work.

The Carrier has established, or is in the process of establishing, positions of "Special Representative to the Superintendent" in the Offices of the various Superintendents over the property, and assigns thereto the work of distributing cars and related work.

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

CARRIER'S EXHIBIT A - Letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. C. Hopper, Acting General Chairman, under date of July 21, 1965.

CARRIER'S EXHIBIT B - Letter written by Mr. Amour to Mr. H. V. Gilligan, General Chairman, under date of January 7, 1966.

CARRIER'S EXHIBIT C - Letter written by Mr. Amour to Mr. Gilligan under date of February 14, 1966.

CARRIER'S EXHIBIT D - Letter written by Mr. Amour to Mr. Gilligan under date of February 18, 1966.

CARRIER'S EXHIBIT E - Letter written by Mr. Amour, Vice President-Labor Relations, to Mr. Gilligan under date of March 9, 1966.

CARRIER'S EXHIBIT F - Notarized statement from R. I. Miskimins, former Manager of Equipment Utilization in the Transportation Department and former Special Representative to the Superintendent at St. Paul, Minnesota and now Special Assistant to General Superintendent of Transportation.

CARRIER'S EXHIBIT G - Notarized statement from Mr. R. I. Miskimins, former Manager of Equipment Utilization in the Transportation Department and former Special Representative to the Superintendent at St. Paul, Minnesota and now Special Assistant to General Superintendent of Transportation.

CARRIER'S EXHIBIT H - Notarized statement dated February 24, 1966 from Mr. D. F. Walker, Assistant to Superintendent at St. Paul, Minnesota (title changed from Special Representative to the Superintendent).

CARRIER'S EXHIBIT I - Notarized statement dated February 25, 1966 from Mr. E. R. Flaherty, present occupant of Car Distributor Position 1005 at St. Paul, Minnesota.

CARRIER'S EXHIBIT J - Notarized statement from Mr. J. D. Wise, Assistant to Superintendent at Tacoma, Washington (title changed from Special Representative to the Superintendent).

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves the same parties and issues as in Award Nos. 14682 and 15014. The following language from those Awards is equally applicable to the instant case:

"The record does not reveal the particular work or the amount of it allegedly wrongfully taken from clerks. Clerks' Submission consist only of statements of ultimate facts not proven by substantial evidence of probative value. The burden of proof is Clerks. It failed to satisfy the burden. We, therefore, must deny the Claim."

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 Employees involved in this dispute are respectively Carrier and Employees 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 fails for lack of proof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1967.