

Award No. 17014
Docket No. CL-17827

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6482) that:

1. Carrier violated the Clerks' Agreement when, effective Monday, July 17, or Tuesday, July 18, 1967, it abolished sixteen (16) clerical positions at Omaha, Nebraska, by giving the occupants of those positions a verbal notice by telephone on Sunday, July 16, 1967, but written notices of abolishment of their positions were not received until July 19 or 20, 1967, which was not a proper sixteen hour notice of abolishment of their positions, as required by Rule 14 (c) of the Clerks' Agreement.

2. Carrier shall be required to compensate each of the sixteen (16) claimants at the pro rata rate for one or two days' pay as follows:

1. C. S. Miller, Casher	July 18, 1967	\$25.43
2. A. W. Hartung, Revision Clerk	July 18, 1967	24.86
3. K. B. Upchurch, Chief Claim Clerk	July 17, 1967	\$24.55)
	July 18, 1967	\$24.55) 49.10
4. A. J. Vaccaro, Chief Bill Clerk	July 17, 1967	\$24.55)
	July 18, 1967	\$24.55) 49.10
5. A. Benda, Demurrage Clerk	July 17, 1967	\$23.60)
	July 18, 1967	\$23.60) 47.20
6. W. H. Gross, Reclaim Clerk	July 17, 1967	\$23.60)
	July 18, 1967	\$23.60) 47.20
7. A. L. Kohrell, Yard Clerk	July 18, 1967	22.97
8. K. K. Perkins, Chief Yard Clerk	July 17, 1967	24.23
9. C. J. Vaccaro, Chief Clerk-Cashier	July 18, 1967	26.28

10. Merl C. Lindsley, Relief Clerk No. 2	July 18, 1967	23.60
11. W. C. Kaspar, Revising Clerk	July 17, 1967	24.86
12. J. S. Boucher, General Clerk	July 18, 1967	23.60
13. James Allen, Messenger	July 17, 1967 \$20.45)	
	July 18, 1967 \$20.45)	40.90
14. T. A. Breedlove, Relief Clerk No. 5	July 17, 1967	26.28
15. R. V. Pawsley, Yard Clerk	July 17, 1967	22.97
16. E. F. Hobbs, Vacation Relief	July 17, 1967 \$25.43)	
Clerk No. 2	July 18, 1967 \$25.43)	50.86

EMPLOYEES' STATEMENT OF FACTS: The International Association of Machinists on the Missouri Pacific Railroad went on strike at 12:01 A. M., Sunday, July 16, 1967, and at Omaha, Nebraska, Carrier officers or supervisors started at about 12:30 P. M. and continuing through 8 P. M., Sunday, July 16, 1967, calling the claimants, advising them their positions were abolished, except Cashier C. S. Miller, who was notified verbally at 8:30 A. M., Monday, July 17, 1967. The claimants did not receive written notice of abolishment of their positions until July 19 or 20, 1967.

Under date of August 12, 1967, the Division Chairman wrote to the Division Superintendent, filing claims in behalf of the claimants and copy of that letter is here quoted:

"Omaha, Nebraska
August 12, 1967

Mr. J. B. McCormack, Superintendent
Missouri Pacific Railroad Company
Atchison, Kansas

Dear Sir:

Claims are filed as follows for Clerical Employees at Omaha, Nebraska, as a result of violation of Rule 14 of the Clerks' Agreement, when the employees were not given an advance, written notice of the abolishment of their positions, effective July 17, and 18, 1967, as a result of the Machinist Strike, which started at or about 12:01 A. M., Sunday, July 16, 1967, by that Craft picketing the Railroad's facilities:

[Table of claims not reproduced.]

Rule 14 (b), (c) and (d) provides as follows:

(b) When regular established positions are abolished, the occupants thereof will be given a minimum of 5 working days' advance notice in writing, except as provided in Section (c) hereof.

(c) Rules, agreements or practices, however established, that require more than sixteen hours' advance notice before abolishing positions or making force reductions are hereby modified so as not to require more than sixteen hours such advance notice under

OPINION OF BOARD: The issue involved in this case is whether Carrier complied with the Agreement when it abolished Claimants' positions through verbal rather than written notice.

Both parties agree that because of a strike an emergency existed, and that the 16-hour time requirement of Rule 14 of the Agreement was met.

Section (b) of Rule 14 says:

"When regular established positions are abolished, the occupants thereof will be given a minimum of five working days' advance notice in writing, except as provided in Section (c) hereof."

Section (c) provides for notices in the instant emergency situation:

"Rules, agreements or practices, however established, that require more than sixteen hours' advance notice before abolishing positions or making force reductions are hereby modified so as not to require more than sixteen hours such advance notice under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike, provided the Carrier's operations are suspended in whole, or in part and provided further that because of such emergency the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed."

In drafting this Agreement the parties provided in the non-emergency abolishment procedure that notice would be given "in writing."

They failed to do so when the emergency abolishment procedure was written. We can not conclude, as Claimants believe, that the words "such advance notice" was intended to require the Carrier to provide employees with written notification in emergency situations as exist in this case; nor do we find Section 14 (d) requires written notice in emergency cases.

The necessary language to effect written notice in emergency situations could have been included in the Agreement if it had been the intent of the parties. This Board has often held that it can not, through its interpretation, in effect change the Agreement.

It is noted that the Organization subsequent to this incident asked through a Section 6 notice that Section 14 (c) be amended to include the provision "in writing." The negotiation of such an insertion would be the proper approach and not through an Award of this Board.

Therefore the claim is denied.

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

Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March 1969.