



Award Number 17346

Docket Number CL-17905

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Robert C. McCandless, Referee

**PARTIES TO DISPUTE:**

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

**THE LONG ISLAND RAIL ROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6494) that:

1. The Carrier violated the understanding and provisions of the Clerks' Agreement, particularly the Scope Rule, Rule 5-A-3 among others, Memorandum of Understanding #2 and Agreement #47, when it required or permitted the Station Agent at Woodside Station, who holds no seniority rights and is not covered by the Clerks' Agreement and/or clerks who hold no seniority rights in Group "2, seniority district #4, to perform Usher work, train announcing at Woodside Station.
2. This work shall be returned to the Ushers of seniority district #4, covered by the Scope of the Clerks' Agreement upon whose behalf the Agreement was made in accordance with the provisions of the Railway Labor Act, to perform this work.
3. The Carrier shall pay the senior extra employe who did not work each day or the senior regular employe under Agreement #47, who is off on his rest day, a day's pay (8 hours), names and dates of which are shown on Attachment "A", at the pro rata rate or punitive rate of pay according to who should be assigned, effective September 9, 1967, and for each day thereafter until the violation is corrected.

**ATTACHMENT "A"**

September 9, 1967 A. E. Johnson	October 8, 1967 E. A. Labanowski
September 10, 1967 E. A. Lakanowski	October 14, 1967 A. Armatti
September 16, 1967, A. E. Johnson	October 15, 1967 W. Bissinger
September 17, 1967 E. A. Lanowski	October 21, 1967 A. E. Johnson
September 23, 1967 A. E. Johnson	October 22, 1967 C. E. Scott
September 24, 1967 E. A. Labanowski	October 28, 1967 E. J. Zenier
September 30, W. Bissinger	October 29, 1967 C. E. Scott
October 1, 1967 E. A. Labanowski	November 4, 1967 T. Edwards
October 7, 1967 W. J. Murphy	November 5, 1967 T. Edwards

Monday October 16, 1967—E. A. Labanowski and/or their successors, every Saturday and Sunday thereafter until the violation is corrected.

On May 12, 1967, the General Chairman was notified, in accordance with the Attrition Agreement of April 1, 1964, that due to the loss of the handling of newspapers, certain positions would be abolished. Among these positions was Relief No. 8. A copy of this letter is attached hereto, and made a part hereof marked "Carrier's Exhibit A".

On November 8, 1967, the Local Chairman filed claim with the Manager of Stations alleging a violation of the Scope Rule, Rule 5-A-3, Memorandum of Understanding No. 2 and Agreement No. 47. A copy of the Local Chairman's letter is attached hereto, and made a part hereof, marked "Carrier's Exhibit B."

On November 22, 1967, the Manager of Stations denied the claim and arrangements were made in accordance with Memorandum of Understanding No. 4 to meet with the Local Chairman in an effort to formulate a joint statement of facts. A copy of the Manager of Stations' letter is attached hereto, and made a part hereof, marked "Carrier's Exhibit C."

The Manager of Stations and the Local Chairman were unable to agree upon a joint statement of facts and separate statements of facts were submitted to the Director of Personnel and the General Chairman.

The claim was further progressed by the General Chairman to the Director of Personnel and it was denied by the Director of Personnel on February 15, 1968. A copy of the General Chairman's letter is attached hereto, and made a part hereof, marked "Carrier's Exhibit D."

(Exhibits not reproduced)

**OPINION OF BOARD:** Employees have advanced the instant claim before this Board, alleging that Carrier violated the Agreement, in several particulars, by allowing station agents and others who held no seniority rights or who were not "ushers" to perform train announcing at Carrier's Woodside Station. Employees specifically claim eight (8) hours for certain named persons on nineteen specified dates and for every Saturday and Sunday thereafter until the violation is corrected.

Carrier has responded by denying a violation of the Agreement or of any of its parts.

The Employees would have us sustain a claim here where a thorough review of the record and briefs lead us inevitably to the finding that Employees have not sustained their burden of proof. Where Employees have been specific as to the individuals and groups whom they allege should have been doing "ushers" work and as to which days certain they should have been allowed to do it—they have been just as vague as to alleging specifically who did the work and at what times and involving which trains.

This Board will not shrink from its responsibility of interpretations of agreements and alleged violations thereof. But neither will this Board attempt to settle a dispute or controversy where the record lacks the necessary proof as to what the fact situation was. We need more than a mere scintilla of evidence that an agreement has been violated before this Board can be called upon to perform its function under the **Railway Labor Act**.

Consequently, we find that Employees failed in sustaining its burden of proof, and this claim must be 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

That the Agreement was not violated.

**A W A R D**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST:** S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1969.