



Award Number 17533

Docket Number CL-17945

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

ERIE-LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6484) that:

1. (a) Carrier violated the rules of the Clerks' Agreement at Port Jervis, N.Y., when on December 26, 1966, it "annulled" (laid in) the position of Clerk, Yard B, 3 P.M. to 11 P.M., held by incumbent F. J. Lane and later filled the position on that date with a junior employee.
(b) Carrier shall now compensate F. J. Lane for one day's pay at the rate of time and one-half. (Claim No. 1892)
2. (a) Carrier violated the rules of the Clerks' Agreement at Port Jervis, N.Y., when on December 26, 1966, it "annulled" (laid in) the position of Clerk Yard C, 3 P.M. to 11 P.M., held by incumbent W. E. Coleman and later filled the position on that date with a junior employee.
(b) Carrier shall now compensate W. E. Coleman for one day's pay at rate of time and one-half. (Claim No. 1893)
3. (a) Carrier violated the rules of the Clerks' Agreement at Port Jervis, N.Y., when on December 26, 1966, it "annulled" (laid in) the position of Clerk, Yard C, 7 A.M. to 3 P.M. held by incumbent A. W. Sharp and later filled the position on that date with a junior employee.
(b) Carrier shall now compensate A. W. Sharp for one day's pay at the rate of time and one-half. (Claim No. 1894)
4. (a) Carrier violated the rules of the Clerks' Agreement at Port Jervis, N. Y., when on January 2, 1967, it "annulled" (laid in) the position of Clerk, Yard C, 3 P.M. to 11 P.M., held by incumbent W. E. Coleman and later filled the position on that date with a junior employee.
(b) Carrier shall now compensate W. E. Coleman for one day's pay at rate of time and one-half. (Claim No. 1895)

5. (a) Carrier violated the rules of the Clerks' Agreement at Port Jervis, N.Y., when on January 2, 1967, it "annulled" (laid in) the position of Clerk, Yard B, 3 P.M. to 11 P.M. held by incumbent F. J. Lane and later filled the position on that date with a junior employee.

(b) Carrier shall now compensate F. J. Lane for one day's pay at the rate of time and one-half. (Claim No. 1896)

EMPLOYEES' STATEMENT OF FACTS: On December 22, 1966, General Yardmaster R. S. Van Inwegan notified claimants named in Parts 1, 2 and 3 of the above claim that their positions would not work on the Christmas Day Holiday, December 26, 1966 (Employees' Exhibit A), yet in each case the Carrier found it necessary to work the positions that day and instead of utilizing the regular assigned employees (the claimants), Carrier utilized the services of junior employees.

On December 26, 1966, General Yardmaster R. S. Van Inwegan notified the two claimants named in Parts 4 and 5 of the above claim that their positions would not work on the New Years Day Holiday, January 2, 1967 (Employees' Exhibit B), yet in both cases, the Carrier found it necessary to work the positions that day and instead of utilizing the regular assigned employees (the claimants), Carrier utilized the services of junior employees.

As a result of Carrier's action, individual claims were instituted.

Claim 1892—Claimant F. J. Lane

Claim filed by the Local Chairman with Trainmaster Huff on February 7, 1967, (Employees' Exhibit C) who denied the claim on February 15, 1967. (Employees' Exhibit D) by merely stating "* * * this claim is denied." and without giving any reason for the disallowance as required by the rule. On March 1, 1967, the Local Chairman notified the Trainmaster that his decision was not acceptable and would be appealed. (Employees' Exhibit E).

On March 10, 1967, the Division Chairman appealed the claim to Superintendent R. L. Downing (Employees' Exhibit F) who denied the claim on April 7, 1967. (Employees' Exhibit G). On May 8, 1967, the Division Chairman notified the Superintendent that his decision was not acceptable and would be appealed. (Employees' Exhibit H).

On May 24, 1967, the General Chairman appealed the claim to Mr. R. A. Carroll, General Manager-Labor Relations, the highest officer of the Carrier designated to handle labor disputes. (Employees' Exhibit I).

There is no dispute between the parties that the issue and principle in each of the five claims incorporated in this one submission is identical and as each claim was filed within the time limits and handled on appeal in the usual and prescribed manner, the Employees' record of handling on the property is being documented below without the exchanges of correspondence being reproduced.

Claim #1893—Claimant W. E. Coleman

Local Chairman filed claim with Trainmaster Huff on February 3, 1967.

second trick yard engine assignments and the two 3 P.M. to 11 P.M. yard clerk assignments would also have to be worked and, therefore, Messrs. Lane and Coleman were called to cover their regular assignments by Chief Caller W. G. Cuddeback. Caller Cuddeback was unable to contact them, see statements attached as (Carrier's Exhibits B and C), thus, junior employees were called and worked.

Carrier determined that on New Years Day, January 2, 1967, service requirements did not warrant working the two 3 P.M. to 11 P.M. yard clerk assignments. Messrs. Lane and Coleman, the incumbents of these positions, were so notified on December 29, 1966. About 12 noon it was decided that because of bad weather conditions, the annulled second trick yard engine assignments and the two clerical assignments would have to be worked. Accordingly, Messrs. Lane and Coleman were called to cover their regular assignments by Chief Caller W. G. Cuddeback. Caller Cuddeback was unable to contact them, see statements attached as (Carrier's Exhibits D and E), thus junior employees were called and worked.

Claims filed on behalf of Messrs. Sharp, Lane, and Coleman, hereinafter referred to as claimants, account not worked on the involved dates were timely instituted and handled in the proper procedure. The statements attached as Carrier's Exhibit A through E were shown to Organization representatives when the cases were discussed in conference on November 15 and 16, 1967. Copies were furnished to the Organization on January 5, 1968 with Carrier's confirming denial letter of claims (Carrier's Exhibit F). On February 8, 1968, the Organization wrote Carrier furnishing vague statements from the claimants dated February 4 and 5, 1968, or over 1 year after the dates of claim, alleging they were home and available (Exhibits G through L), to which Carrier replied on February 23, 1968, (Exhibit M). On May 29, 1968, (Exhibit M), or 13 days before the case was submitted to this tribunal for adjudication, Petitioner submitted a letter of how the involved assignments have been used in the past on holidays and in connection with its statement that based thereon it was "unable to understand General Yardmaster Van Invegan's advance decision to lay in the positions here involved on the holidays in question."

(Exhibits Not Reproduced)

OPINION OF BOARD: Carrier initially informed the Claimants herein that they would not work their regular assignments on the holidays in question. Later, Carrier found it necessary to work their said assignments.

Carrier alleges that it's Chief Caller, L. T. Davenport, called each Claimant by telephone for work on said holidays, but each Claimant was not available; and therefore it was justified in using junior employees for said work.

The record shows that Carrier's Chief Caller, L. T. Davenport, made statements stating that he made only one attempt by telephone to reach each of the claimants because of other pressing calls to be made.

Each Claimant made a statement stating that they were at home and available to work on the dates in question.

This Board has been confronted with similar disputes as to whether or not one phone call is sufficient effort on the part of Carrier to call Claimant employees on said days in question.

As was said by this Board in Award No. 4189:

"The Carrier admits only one attempt was made to reach employee. Telephone service connections are not infallible and additional effort might well have been made. Emergency conditions are not shown to the extent to preclude two attempts to reach employee."

See also Award Nos. 16279 and 17183.

Therefore, we will sustain these claims.

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 violated.

A W A R D

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October 1969.