

Award No. 18004
Docket No. CL-18354

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 EMPLOYES**

THE BELT RAILWAY COMPANY OF CHICAGO

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL*6622) that:

1. Carrier violated and continues to violate the Clerks' Agreement, when effective March 25, 1968 it discontinued the assigned rest days of the incumbents of Positions 11, 12, 26 and 28 and Relief Position No. 1 in the Office of Superintendent.

2. Carrier shall restore the originally bulletined and assigned rest day to above named positions.

3. Carrier shall compensate the incumbents of the above named positions, or the employes here adversely affected as specifically set forth in the attached Appendix A.

4. That the Employes' claim as set forth in Sections 1 and 2 hereof was presented to the Carrier's Director of Personnel, Mr. C. M. Crawford, on August 19, 1968 and was declined in a letter dated October 19, 1968, which was not received until October 21, 1968, or some sixty-three (63) days later and as a consequence thereof, the Carrier did not meet its obligations as set forth in Section (a) of Article V of the August 21, 1954 Agreement and, therefore, the claim must be allowed as presented.

EMPLOYES' STATEMENT OF FACTS: Prior to March 25, 1968, there were in existence in the Carrier's Superintendent's Office, among others, the following positions.

Pos. No.	Incumbent	Hrs. of Assignment	Rest Days	Seniority Date
11	G. M. Allen	8:00AM to 4:00PM	Sun&Mon	1-15-54
12	M. McIntyre	8:00AM to 4:00PM	Sat&Sun	8-5-47
26	R. Beilka	4:00PM to 11:59PM	Tues&Wed	6-23-49
28	B. Rutherford	4:00PM to 11:59PM	Mon&Tues	3-17-60

CARRIER'S STATEMENT OF FACTS: Prior to the effective date of the rest day changes that resulted in this dispute, a series of operational and/or organizational changes occurred. For a number of years the Superintendent's Office had a sizeable staff with a Chief Clerk and two stenographic positions under the Agreement—a stenographer and a stenographer-clerk. In this office was an Assistant to the Superintendent who, among other things, handled the correspondence with other railroads, shippers, labor matters, etc. Safety and loss and damage prevention was also handled out of this office.

In one phase of reorganization, when the assistant to the Superintendent retired, a large part of the correspondence, particularly labor matters, was then handled by the Assistant Superintendent, who was located in another building with his own office force.

Subsequent to this change in the office work, the Superintendent was promoted to a Vice President, retaining his office force and responsibility for safety and loss and damage prevention. The Assistant Superintendent was promoted to Superintendent and the assistant's position not filled. The responsibility for safety and loss and damage prevention was turned over to a newly formed Special Services Department. The Vice President was transferred to the Executive Department. With this transfer the lower rated steno position was abolished and the remaining duties of the two positions performed by the steno-clerk. No days-off change was made at that time. However, as time went on, the Vice President found it difficult to effectively operate with the regular steno-clerk only being available four of the five normal work week days. The relief is performed by an employee who only compiles the reports and is not qualified as a steno. The relief is tied in with relief of Train Clerks (crew callers). The relief on this position is set up so that the reports could be compiled every day. Thus it was necessary for operational, as well as organizational reasons to change the off-days on Position No. 7 to Saturday and Sunday, and adjust the Train Clerks' off-days in order that the relief would have five days' work per week.

OPINION OF BOARD: The Organization contends that Carrier violated the Agreement when it changed the assigned rest days of Positions No. 11, 12, 26 and 28 and Relief Clerk Position No. 1 in the Office of Carrier's Superintendent.

The Organization raises a procedural defect, claiming that Carrier's declination of the claim, by letter dated October 19, 1968, although postmarked Saturday, October 19, 1968, was not received by the Organization's General Chairman until Monday, October 21, 1968, more than 60 days later, and thus Carrier violated the time limit provisions of Article V of the August 21, 1954 Agreement.

The Carrier contends that the time limit rule requirements were satisfied when the written letter of declination was "mailed" by U.S. Mail on October 19, 1968, which would bring it within the 60 day period provided by said Article of the 1954 Agreement.

Therefore, the procedural issue to be decided herein is whether or not Carrier met the requirements of Article V of the August 21, 1954 Agreement (also Rule 29, Section 1(a) of the Agreement) when it "mailed" the written letter of declination to the General Chairman.

It is undisputed that the letter of declination was not "received" by the Organization within the 60 day time limit provisions of said Article V of the August 21, 1954 Agreement.

We find this Board's Award No. 15443 controlling in the determination of this dispute. As was concluded in said Award No. 15443:

"... In computing the time limitation the day of receipt by the highest officer is not counted; but, the written denial must be in the hands of the organization not later than on the last day of the time period. . . ."

Inasmuch as the written letter of declination was not in the hands of the Organization not later than on the last day of the time period, then Carrier violated the Agreement in this instance. However, since the claim is a continuing claim and in view of NDC Decision 16, liability for damages on the part of the Carrier as a result of said violation ceased as of October 21, 1968, the date the Organization received Carrier's said letter of declination.

Inasmuch as the Carrier did not violate the Agreement by changing the rest days of the positions involved, Part 1 and 2 of the claims are 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 violated in accordance with the Opinion.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1970.

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****Interpretation No. 1 to Award No. 18004****Docket No. CL-18354**

Name of Organization:**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYES****Name of Carrier:****THE BELT RAILWAY COMPANY OF CHICAGO**

Upon application of the representatives of the Employees involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

The Organization contends that the purpose and intent of the claim as filed was to allow each Claimant four (4) hours additional compensation for each of their former assigned rest days, which normally under the Agreement after the change of rest days took place, they would have been required to work, and eight (8) hours compensation for each of the rest days on their new assignments, which normally under the Agreement, after the change of rest days took place, they would not have been required to work.

This Board, in said Award No. 18004, concluded that Carrier did not violate the Agreement by changing the rest days of the positions involved and denied part 1 and 2 of the claims. This Board, by virtue of Article V of the August 21, 1954 Agreement, is restricted to allowing the claim as presented if Carrier fails to notify in writing within 60 days from the date same is filed whomever filed the claim or grievance.

Carrier argues that inasmuch as it was shut down due to strike of trainmen from July 29 to November 7, 1968, then Claimants are not entitled to compensation from July 29 to October 21, 1968. With this contention we do not agree. NDC Decision 16 concluded in a situation analogous to the instant dispute that:

"As to the contention of the carrier that even though Article V of the August 21, 1954 Agreement was violated, the claim for payment must be disallowed inasmuch as the claimant was on

leave of absence during the period involved, the National Disputes Committee rules that claimant's leave of absence does not relieve the railroad of its liability for payment of a claim arising out of the railroad's failure to comply with the requirements of Article V of the August 21, 1954 Agreement."

The Organization presented the claim as set forth in "Appendix A" and we therefore find that Claimants are entitled to compensation from March 25, 1968 to October 21, 1968 as follows:

(1) Mary McIntyre for the difference between the straight time and the penalty rate for each Saturday required to work, as well as eight (8) hours at the straight time rate for each Monday she was not permitted to work.

(2) G. M. Allen for the difference between the straight time and the penalty rate for each Sunday and Monday required to work, at the rate of pay of the Chief Clerk's position, as well as eight (8) hours at the straight time rate for each Wednesday and Thursday he was not permitted to work.

(3) R. Beilka for the difference between the straight time and penalty rate for each Tuesday and Wednesday required to work, as well as eight (8) hours at the straight time rate for each Friday and Saturday he was not permitted to work.

(4) B. Rutherford for the difference between the straight time rate and the penalty rate for each Monday and Tuesday required to work, as well as eight (8) hours at the straight time rate for each Wednesday and Thursday he was not permitted to work.

(5) E. Vokral for the difference between the straight time and the penalty rate for each Friday and Saturday required to work, as well as eight (8) hours at the straight time rate for each Sunday he was not permitted to work.

(6) F. J. Cooke for the difference between the straight time and penalty rate for each Thursday and Friday required to work, as well as eight (8) hours at the straight time rate for each Sunday and Monday he was not permitted to work.

Referee Paul C. Dugan, who sat with the Division, as a neutral member, when Award No. 18004 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1971.

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