



Award No. 18073

Docket No. CL-18389

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**

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6638) that:

1. The Carrier violated the provisions of the Clerks' Agreement, effective July 1, 1963, when it transferred the work of securing, handling, retaining, counting and accounting for their own work from the following employees employed in the Freight Revenue Accounting Department to Special Accountant R. J. LaFond, commencing with October 9, 1967:

F. A. Cates, Bureau Chief
W. J. Meehan, Assistant Bureau Chief
R. E. Nightingale, Clerk
A. W. Cooper, Jr., Clerk
R. L. Paul, Clerk
D. W. Zabel, Clerk
T. W. Hinton, Clerk
T. T. Pasquale, Clerk
R. L. Schowalter, Clerk
D. J. Thompson, Clerk
K. A. Brown, Clerk
R. H. Doody, Clerk

2. The Carrier violated Rule 55 of the July 1, 1963 Clerks' Agreement when it failed to allow the claim of the twelve employees specified in Item 1 hereof for payment of one hour computed at straight time rate on October 9, 1967 and succeeding workdays and holidays as presented.

3. The Carrier shall now be required to compensate the employees specified in Item 1 hereof one hour per day on October 9, 1967 and each succeeding workday and holiday in addition to the compensation already paid.

OPINION OF BOARD: On October 18, 1967, claims were filed by the Clerks' Division Chairman with Carrier's Manager-Freight Revenue, on behalf of the named claimants, retroactive to October 9, 1967.

Mr. Goodyear, Manager-Freight Revenue, declined the claims in his letter of December 26, 1967, which is in excess of the 60-day time limit provisions of Rule 55, Grievances, of the parties' Agreement effective July 1, 1963. Notwithstanding the Carrier's arguments in defense of the time limit violation, there is nothing in the Record to indicate that an extension of time limits was agreed to between the parties; further, the Employees' request for further conference did not constitute a waiver of the time limit requirements. National Disputes Committee Decision 15.

Many awards of this Division, along with those of other Divisions of this Board and other Boards of Adjustment, support the Employees' claim of Carrier's procedural defect under the time limit provisions of Rule 55. Awards 17672 (Ritter), 17291 (Yagoda), 16884 (Goodman), 16727 (Engelstein), 16564 (Dorsey), 16094 (Engelstein), 16001 (Heskett), 15801 (House), 15697 (Dorsey). The claims shall be allowed as presented, Carrier's liability terminating December 26, 1967, the date of the untimely denial. National Disputes Committee Decision 16.

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 Carrier violated the Agreement 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 11th day of September 1970.



Serial No. 244

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 18073

Docket No. CL-18389

Name of Organization:

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

Name of Carrier:

NORTHERN PACIFIC RAILWAY COMPANY

Upon application of the representatives of the Employees involved in the above Award, that this Division interpret the same in 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 to fully comply with Award No. 18073, the Carrier must compensate each of the twelve named claimants one hour per day at straight time rate on October 9, 1967 and each succeeding workday and holiday in addition to compensation already paid during the entire period of the claim regardless of whether claimants vacated the positions specified in the "Statement of Claim" due to promotions, leaves of absence, vacations or resignations.

This Board, in said Award No. 18073, concluded that the "claims shall be allowed as presented." A review of the record shows that the Organization originally commenced the claim on the property when the Division Chairman addressed a letter dated October 18, 1967 to Carrier's Manager Freight Revenue Accounting in which he stated that: "This claim is for one (1) hour's pay per day for each of the above named employees, at their respective rates, on October 9, 1967, and each succeeding workday, holiday, etc., due to carrier's violation of our agreement, particularly Rules 1-6, 2, 3, 10, 11, 14 and 48. As this is a continuing violation, this claim is filed for present and future incumbents."

However, the claim as presented to this Board is that: "The Carrier shall now be required to compensate the employees specified in Item 1 hereof one hour per day on October 9, 1967 and each succeeding workday and holiday in addition to the compensation already paid." Thus, it is seen that the Organization did not pursue the claim as presented on the property, but changed the claim asking for one hour per day on October 9, 1967, and "each succeeding workday and holiday." Thus the claim is limited to workdays and holidays

only, and it cannot be expanded, as the Organization desires, to include claims of claimants who vacated the positions in question for some reason such as leave of absence, vacation or resignation.

Therefore, Carrier shall allow each claimant named in the claim one hour's pay at the straight time rate for October 9, 1967 and one hour's pay at the straight time rate for each workday the named claimants performed compensated service for Carrier, and for each holiday occurring in the claim period of October 9, 1967 to December 26, 1967.

Referee Paul C. Dugan, who sat with the Division, as a neutral member, when Award No. 18073 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1971.