

Award No. 18553
Docket No. CL-18790

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Thomas Rimer, Jr., Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6770) that:

1) Carrier violated, and continues to violate, the Clerks' Agreement at Fullerton Avenue Office Building, Chicago, Illinois when in reducing forces in the office it failed to abolish the lowest rated Comptometer Operator position and in lieu thereof abolished Comptometer Operator Position 02700 effective June 28, 1968.

2) Carrier shall be required to reinstate Comptometer Operator Position No. 02700.

3) Carrier shall be required to compensate employe M. Mastro the difference in the rate between the lowest rated Comptometer Operator Position 02700 for July 1, 1968, and for all subsequent days until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: At Fullerton Avenue, Chicago, Illinois, the Carrier maintains an Office of Assistant Comptroller in Seniority District No. 71. While the employes in that office are separated as to Bureaus, all are located in one office under the general supervision of the Assistant Comptroller who bulletins and makes assignments to the positions located therein.

Prior to June 29, 1968 the Carrier had the following Comptometer Operator positions in effect at its Fullerton Avenue Office in District No. 71:

Pos. No.	Daily Rate of Pay	Pos. No.	Daily Rate of Pay
02700	\$24.1967	03010	\$23.8092
02830	24.0675	03050	23.8092
02840	24.0029	03060	24.9716
02860	24.0029	03070	24.1967

ing Comptometer Operator Position No. 02700 as of 4:45 P.M., June 28, 1968.

Position 02700 was the lowest rated position in the class in the office of Assistant Comptroller and, therefore, was properly abolished in accordance with the provisions of Rule 12(c) and a past practice of long standing.

Yours very truly,

/s/ J. Jacobson
Assistant Comptroller

On July 16, 1968, General Chairman Hopper presented formal claim to Mr. Jacobson, Assistant Comptroller, which is the same claim presently before your Board.

Employee M. Mastro, who is the claimant in the instant case, occupied Comptometer Operator Position 03010, located in the office of Auditor of Freight Accounts and Overcharge Claims, at the time the claim was filed in his behalf. He was not either directly or indirectly affected by the abolishment of Position 02700.

Attached hereto as Carrier's Exhibits are copies of the following letters:

Letter written by Mr. L. W. Harrington, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of December 27, 1968.....Carrier's Exhibit "B"

Letter written by Mr. Harrington to Mr. Hopper under date of January 17, 1969.....Carrier's Exhibit "C"

(Exhibits not reproduced.)

OPINION OF BOARD: This case presents two issues. The Carrier contends that the claim is barred from consideration by the Board because of the Organization's failure to process the claim as required by Rule 36, "Claims and Grievances." In light of this contention the Board will first determine whether there is, in fact, a procedural deficiency here before giving study to the claim on its merits.

Rule 36 is quoted below in pertinent part:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

By letter dated April 29, 1966 the Carrier notified the Organization of the identity of its representatives, by position title, authorized to receive a claim in first instance, to receive first appeal, and to receive last appeal.

The Claimant in the instant case was an employe within the supervisory jurisdiction of the Auditor of Freight Accounts and Overcharge Claims, a position designated by the Carrier to receive the claim in the first instance. The Organization elected to present the claim initially to the Assistant Comptroller, designated to receive the first appeal. The first appeal was then taken to the Comptroller which position is not designated by the Carrier to participate in the claims and grievances procedure in any circumstance.

The argument advanced by the Organization for proceeding in this manner was that the job abolished by notice from the Carrier was "in that branch of the Office of Assistant Comptroller, not only under the general supervision but also the direct supervision of the Assistant Comptroller."

Clearly the Agreement permits the Carrier to designate its representatives at each step in the grievance procedure, an obligation it had fulfilled. Rule 36 1(a) requires that the claim must be presented on behalf of the employe involved to the officer authorized to receive same. The Carrier contends that, since the Claimant on whose behalf the claim was filed was under the supervision of the Auditor of Freight Accounts and Overcharge Claims, his claim should have been filed in the first instance with that individual.

This Board has consistently held in numerous awards that a claim must be filed with the representative duly designated by the Carrier to receive claims. The procedure for processing claims was collectively bargained by the parties, must be complied with, and cannot be waived or set aside except by mutual agreement of the parties.

The record shows that the claim here was not presented to the proper official of the Carrier at any time during the handling on the property. Therefore, the Board cannot consider the substantive issue in the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 claim was not filed in accordance with Rule 36 of the Agreement, and is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1971.

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