

Award No. 19104
Docket No. CL-17141

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6264) that:

1. Carrier violated the rules of the Clerks' Agreement at Elgin, Illinois, when effective with the abolishment of Warehouse Foreman Position No. 1956, it rearranged the clerical work at that point and unilaterally transferred assigned and continues to assign clerical work to the Agent, an employee outside the scope and application of the Clerks' Agreement.

2. Carrier shall be required to return the clerical work assigned to and being performed by the Agent to positions and employees within the scope and application of the Clerks' Agreement.

3. All employees involved in or affected as result of Carrier's action; namely, Messrs. L. R. Schmidt, W. K. VanArsdall and Wm. Pulman, Jr. shall be compensated for all wage losses suffered and accorded all other benefits prescribed in the February 7, 1965 Agreement until the violation is corrected, including restoration of protective status lost as result thereof.

EMPLOYEES' STATEMENT OF FACTS: A clerical force has been maintained at Elgin, Illinois for many, many years. Labor Board Award No. 1986 effective October 16, 1923, shows the following positions as being in effect at Elgin at that time:

Title	Position No.
Cashier	14
Rate Clerk	15
Foreman	19
Bill Clerk	16
Clerk	468
Truckers (3)	—

November 16, 1923	1st Operator 2nd Operator 3rd Operator
December 1, 1927	1st Operator 2nd Operator 3rd Operator
May 1, 1939	Agent 1st Operator 2nd Operator
April 1, 1947	Agent 1st Operator 2nd Operator
September 1, 1949	Agent 1st Operator 2nd Operator

The first Agreement with the Clerks' Organization on this property became effective January 1, 1920 or, in other words, almost 17 years after the first TCEU Agreement, and has subsequently been devised on February 1, 1922, November 1, 1929, January 16, 1946 and September 1, 1949.

Warehouse Foreman Position No. 1956 was established at Elgin, Illinois for the express purpose of assisting the Agent and/or other employes within the scope and application of the TCEU Agreement in the performance of that part of the station work which, because of the volume involved, the Agent and/or Operators were and/or are unable to perform.

When, account a diminution of work, that station work in excess of the capacity of the Agent and/or Operators, which was jointly participated in by the occupants of the Agent, Operators and Warehouse Foreman Position No. 1956, diminished and/or ceased to exist, the need of the Agent and/or Operators for the assistance of Warehouse Foreman Position No. 1956 also ceased to exist and Warehouse Foreman Position No. 1956 was, therefore, abolished effective March 31, 1965.

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

Copy of letter written by Mr. S. W. Amour, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of September 23, 1966Carrier's Exhibit "A"

Copy of letter written by Mr. Amour to Mr. Hopper under date of October 20, 1966Carrier's Exhibit "B"

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner contends that effective March 31, 1965, Carrier effected certain organizational and operational changes at its Elgin, Illinois facility when it abolished a clerical position of Warehouse Foreman and distributed the duties attaching thereto to remaining clerical positions at that location (i.e., Chief Clerk, Cashier and Baggage-man) and to the Agent, an employe beyond the Scope of the Clerks' Agreement.

A "Statement of Claim" was filed directly with the highest Carrier officer, the Vice President-Labor Relations, alleging a violation of the February 7, 1965 National Employment Stabilization Agreement. In accordance with the procedures then existing, it was proper that claims and grievances involving

interpretation of the February 7, 1965 Agreement be submitted to Carrier's highest officer without local handling being required.

Said claim was submitted to Carrier's highest officer on April 28, 1965, but the Record reveals that Carrier "slept" on the claim until a tracer letter was transmitted dated June 24, 1965 and, on that same date, a letter was addressed to the General Chairman by Carrier's Vice President-Labor Relations, declining the claim on the basis that it had not been timely filed with the officer authorized to receive claims and grievances in the first instance.

After receiving this declination, the initial claim, substantially as now presented to the Board, was on April 15, 1966 submitted to the Carrier's Superintendent, Savanna, Illinois, contending a violation of Scope Rule 1(e), Rule 57—Date Effective and Changes, and Section 1, Article III of the February 7, 1965 National Employment Stabilization Agreement.

We sympathize with the chaos which undoubtedly reigned when the dispute arose, less than two months after consummation of the February 7, 1965 Agreement; however, having initiated the claim as a violation of the February 7, 1965 Agreement, it was incumbent on Petitioner to either follow through by presenting the claim to the Disputes Committee established under Article VII of that Agreement, or timely filing his alleged Scope Rule violation claim under Article V of the August 21, 1954 Agreement within 60 days of date of occurrence.

The Record does not contain any evidence that the claim denied by Carrier's Vice President-Labor Relations on June 24, 1965 was ever appealed to the Article VII February 7, 1965 Disputes Committee. What happened to this claim, however, is immaterial as a result of subsequent actions by Petitioner. Over a year after the alleged violation occurred, the matter was presented to the Superintendent at Savanna, Illinois. The Petitioner was clearly out of time. We, therefore, have no alternative but to dismiss 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 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.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killcen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1972.

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