

Award No. 19125

Docket No. CL-16689

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6084) that:

(a) The Southern Pacific Company violated and continues to violate the Clerks' Agreement when on or about April 30, 1958, clerical work consisting of checking the yard at Cottage Grove, Oregon, was removed from under the scope of the Clerks' Agreement, and assigned to an employee of another class and craft;

(b) The Southern Pacific Company shall now be required to return work of checking the yard at Cottage Grove to employees covered by the Clerks' Agreement;

(c) The Southern Pacific Company shall be required to allow Mr. D. R. Kennedy and/or his successor or successors in interest—namely, any other employee or employees who may stand in the same status as claimant and who may be adversely affected—a two-hour call at the overtime rate of his assignment, Position No. 9, Freight Clerk, for date of February 5, 1962, and for each subsequent date that a similar violation occurs, such dates to be determined by a check of the Company's records.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including subsequent revisions, (hereinafter referred to as the Agreement) between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

While covering his territory on the Portland Division early in 1962, Division Chairman J. H. Groskopf was informed by the membership at Eugene, Oregon, that a telegrapher at Cottage Grove, Oregon, was being utilized by Carrier to check yards and industries at that point. Investigation was immediately undertaken to develop all of the circumstances which would indi-

By letter dated June 11, 1962 (Carrier's Exhibit "D"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated November 11, 1963 (Carrier's Exhibit "E"), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to April 30, 1958, Claimant was the incumbent of Position No. 5, Station Yard Clerk, whose work consisted of checking the yard at Cottage Grove, Oregon. Position 5 was abolished on that date and the work transferred to Position 3. Position 3 is a Telegrapher position not covered by the Clerks' Agreement. The Organization contends that the transfer of this work to the Telegrapher by Carrier was a violation of the applicable Agreement, particularly Rule 21.

Carrier contends that the claim was not commenced until February 5, 1962, although the occurrence which gave rise to the claim allegedly occurred on April 30, 1958, four years prior thereto. It is Carrier's position that the claim is barred under Article V, Section 1(a) of the August 21, 1954 Agreement, which provides in pertinent part:

"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 * * *"

The Organization defends on the theory that the alleged violation is a continuing one and not subject to the provisions of Article V, Section 1(a).

Here, the action complained of was the abolishment of Position 5 and the transfer of Position 5 work to a Telegrapher not covered by the Clerks' Agreement. It is conceded that the abolishment and transfer occurred on April 30, 1958. Therefore, the alleged violation was a distinct action occurring on a particular day, and cannot be a continuing violation. Thus, the Time Limit Rule is applicable as the claim was not filed within sixty days after the date of the occurrence upon which it is based, and we are compelled to dismiss it.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon; and upon the whole record and all the evidence, finds and holds:

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 Claim 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 April 1972.

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