Award No. 19147
Docket No. CL-16093

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5914) that:

(1) The Carrier violated and continues to violate the Clerks' Agreement of December 1, 1956, as amended, by requiring or permitting Conductors, employes not covered by the Clerks' Agreement, to perform work of weighing cars at Newnan, Georgia; and,

(2) Clerk J. E. Camp, and/or his successors, if any, shall now be compensated for a two-hour call at penalty rate for each and every instance this violation has occurred since July 31, 1964, i.e., beginning August 5, 7, 8, 10, 12, 14, 17, 18, 19, 20, 26, 27, 28, 31 and September 1, 2, 3, 4, 7, 11, 16, 18 and 19, 1964, and continuing thereafter until this work is restored to the sole and exclusive performance of Clerks.

EMPLOYES' STATEMENT OF FACTS: Under date of September 29, 1964, Vacation Relief Clerk J. E. Camp, then located at Cedartown but whose vacation schedule covers all positions covered by the Clerks' Agreement from Newnan, Georgia to Cedartown, Georgia, filed a claim for one (1) two-hour call each under Rule 36 (a) because Conductors, employes not covered by the Clerks' Agreement, were being required or permitted to weigh cars at Newnan, Georgia—work which had been assigned solely and exclusively to Clerks' performance at that point. (See Employes' Exhibit No. 1).

Under date of November 10, 1964, Trainmaster H. C. Windham denied the claim for July 31st in that it was correctly barred under Rule 25—TIME LIMITS of the current agreement, but Mr. Windham went on to allege that Vacation Relief Clerk J. E. Camp was not the proper claimant and therefore he denied the claim. Copy of Mr. Windham's letter, which is self-explanatory, is hereto attached and identified as Employes' Exhibit No. 2.

January 7, 1965 the General Chairman appealed the claim to Superintendent H. L. Bishop, Jr., the next highest officer designated by the Carrier for the handling of claims and grievances under our agreements, and copy of this letter, which substantially outlined the position of the System Committee, together with a compendium of excerpts from pertinent applicable awards of the Third Division National Railroad Adjustment Board covering this matter,

claims demanded, regardless of any other facts or circumstances the claim must be denied.

D. THE CLERKS' AGREEMENT DOES NOT MENTION THE WEIGHING OF CARS.

The Clerks' Agreement does not mention anywhere anything about the weighing of cars. It is a fact that at least 99% of all cars weighed on this railroad are weighed by other than clerical employes. These facts are fully supported by affidavits attached hereto marked CARRIER'S EXHIBITS #2, #3, #4 and #5 as well as a partial and incomplete list of cars weighed by Train Conductors at Newnan, Georgia, marked CARRIER'S EXHIBIT #6. There are 241 cars shown in the list, and every one of the "weighers" were Conductors of the freight train that picked up the car either at some other station or agency, or picked the car up at an industry at Newnan.

E. THE CURRENT CLERKS' AGREEMENT EFFECTIVE DECEMBER 1, 1956 CONSTITUTES ALL OF THE THINGS THE PARTIES ARE BOUND BY.

It is a fact that Rule 59 of the current Agreement reads as follows:

> "Rule 59 — Effective Date and Notice of Change in Agreement
>
> This agreement shall be effective as of December 1, 1956, superseding all other rules, agreements and understandings in conflict herewith and shall continue in effect until it is changed as provided herein, or under the provisions of the Railway Labor Act, as amended.
>
> Should either party to this agreement desire to revise or modify these rules, thirty (30) days' written advance notice, containing the proposed change, shall be given, and conference shall be held immediately on the expiration of said notice unless another date is mutally agreed upon."

It is self-evident that the current Agreement constitutes all of the things the parties intend to be bound by. There is nothing in Rules 1 through 59 (the last rule) that even mentions weighing of cars, and there is nothing in the twenty-four (24) memorandums in the back of the printed agreement that mentions the weighing of cars. Since the weighing of cars is not covered by the Clerks' Agreement negotiated and placed into effect December 1, 1956, it is a fact that the only way such work could possibly be placed under the Clerks' Agreement is by negotiating a rule granting the weighing of cars to clerks. It is a further fact that the Third Division of the Board has no lawful authority to write a rule for the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier contends that the claim before the Board was not processed in the usual manner up to the Chief Officer designated to handle such disputes, all set forth in Rule 25 of the agreement. Carrier contends that the claim should be dismissed. Petitioner contends that the claim is properly before the Board and should be sustained.

The claim is before the Board was first presented to the Superintendent, the first appeals officer on January 7, 1965, in a letter to that officer appeal-

ing the denial of the claim by the Trainmaster on November 10, 1964. The relevant part of the letter reads:

> "* * * and continuing thereafter until this work is restored to the sole and exclusive performance of clerks."

The Trainmaster had denied the claim dated September 29, 1964 of Claimant Camp who had sought redress for himself based on alleged violations of the agreement on 24 stated days beginning July 31, 1964 and ending September 19, 1964, by reason of assigning conductors to do weighing of cars at Newnan, Georgia.

In Petitioner's appeal of the Superintendent's denial to the Vice President (the next appeal officer) on March 3, 1964 the claim was stated as follows:

> "We hereby appeal from and request your further consideration in connection with denial by Superintendent H. L. Bishop, as given in his letter of March 1, 1965, his file 125-19-B, of our claim for and in behalf of Clerk J. E. Camp and/or his successor or successors in interest, for payment of a two (2) hour call on August 5, 7, 8, 10, 12, 14, 17, 18, 19, 20, 26, 27, 28, 31 and September 1, 2, 3, 4, 7, 11, 16, 18, 19, 1964 and for each and every instance retroactive to November 10, 1964 and continuing thereafter upon which Conductors and/or unauthorized personnel not covered by the Clerks' Agreement perform the work of weighing cars at Newnan, Georgia, and which work has been solely and exclusively performed by employes covered by the Clerks' Agreement at least since June 1940."

The record fails to reveal that the claim was properly handled under Rule 25 of the agreement which requires, in part:

> "(a) All claims or grievances must be presented in writing by or on behalf of the employe 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 . . ."

in that the claims made to the Superintendent and Vice President were never made to the Trainmaster. The claim before the Board is worded somewhat differently but it is in essence the claims made to the Superintendent and Vice President. However, it is not the claim made by Claimant Camp to the Trainmaster, which was denied as aforesaid.

Petitioner states that Claimant Camp could not preclude the Organization from filing a broadener claim by anything he said in his claim letter and Carrier's position is an attempt to deal with Claimant Camp individually rather than through the Organization as required by the agreement and the Act. The record will not support such findings as to the latter. As to the former, we agree that the Organization could, consistent with other applicable rules, broaden the claim if it did so in accordance with Rule 25 as quoted above.

On the basis of the foregoing we find that the claim before the Board was not handled on the property in accordance with Rule 25. As Carrier timely raised its objection and there being no evidence of an expressed or implied waiver by Carrier we will dismiss the claim. Awards 12490, 13235, 18322 and others.

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 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 Agreement was not violated.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1972.

LABOR MEMBER'S DISSENT TO AWARD 19147 (DOCKET CL-16093) (Referee Cull)

This decision is in serious error.

The Claimant's letter of September 29, 1964, addressed to the Trainmaster, reads, in part, as follows:

> "The following is a list of 24 violations of the clerk's agreement by conductors weighing cars at Newnan after hours and on rest days. Please accept this as my claim for a 2 hour call at penalty rate for each violation."

after which he specifically listed twenty-four (24) dates.

That part of the claim for twenty-three (23) dates (we shall discuss one date hereinbelow) in behalf of a named employe, deserved to have been considered by this Board on the merits. The fact that the claim was, as argued by Carrier, enlarged and/or expanded on appeal, does not alter the initial claim because the specified dates, named Claimant and the stated violation continued to be carried in the letter at each appellate step in the progression of this claim.

Even the Trainmaster's denial of the initial claim recognized that although one claim date, i.e., July 31, was untimely because it was not within 60 days of the date of the letter of claim and was, therefore, barred from consideration, that fact was not fatal to the remaining dates for which claim was filed. The Trainmasters decision in that respect was correct and many Awards fo the Board have so held. That, of course, was not the issue.

The merits of the claim in this dispute, for the specific dates and named Claimant, should have been adjudicated by the Board. And, based on the facts of Record, it was clearly and conclusively proved that at Newnan, Georgia, the location at which this dispute arose, other than clerical personnel are not permitted to weigh cars. Support of that fact is found in Employes' Exhibit No. 9-A which is a record of conference between the parties in which various claims and grievances were discussed, among which was claim designated as Docket No. 12, reading:

> "Claim in behalf of Clerk C. B. Oglesby where he is available and in behalf of Clerk W. E. Horne when Clerk Oglesby is not available, or any other Clerk working his position when Clerk Oglesby is not available, in the amount of one 3-hour call for each and every instance, retroactive to September 12, 1951 where any employe other than a Clerk performed the weighing of cars at Newnan, Ga., either during or outside of the regularly established hours of service of the Clerk.
>
> DECISION: Overtime ticket dated November 22, 1951 in favor of Clerk C. B. Oglesby for a minimum call will be allowed. Train crews will be instructed to stop weighing cars at Newnan, Ga. as the weighing of cars at that particular point belongs to the Clerks."

Dismissal of this dispute based on a procedural defect which should not have been fatal to the entire claim is, indeed, in serious error. I dissent.

J. C. Fletcher
J. C. Fletcher
Labor Member
5-15-72

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