

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19857
Docket Number CL-19841

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7113)
that:

- 1) Carrier violated, and continues to violate, the Clerks' Rules Agreement when it arbitrarily transferred work and established a position to absorb a portion thereof across seniority district lines.
- 2) Carrier shall now be required to adjust the rate of pay established for Steno-Clerk Position No. 65080 from \$25.84 per day retroactive to November 1, 1970 and compensate the regular occupant thereof accordingly for all subsequent days thereafter that the position remains in effect.

OPINION OF BOARD: In 1970, Carrier transferred certain work from one seniority district to another, which prompted the instant claim.

Among numerous issues raised herein, Carrier asserts that the Organization is before an improper forum, because transfer of work from one seniority district to another is specifically covered by a February 7, 1965 National Agreement. If, Carrier urges, that agreement was not properly applied, Organization has recourse to the machinery established therein (Article VII) to remedy any violation.

The Organization denies a jurisdictional impediment to this Board issuing a determination. It insists that Carrier ignored preliminary requirements of the February 7, 1965 Agreement, and thus, Carrier cannot now rely on only those portions of the Agreement which are favorable to it. Further, the Organization stresses that it is prosecuting here a violation of the Basic Rules Agreement - not the National Agreement, and this Board has jurisdiction to determine such a claim.

Without deciding the jurisdictional issues presented, the Board disposes of the matter on procedural grounds. Carrier states that even assuming jurisdiction here, Organization must fail because the employees did not cite any specific rule of the agreement as having been violated.

In the initial claim, the employees alleged a violation of ".... the seniority, and other related rules." In subsequent handling on the property, the Organization failed to further identify the "violation." The Referee herein has recently noted that a failure to assert a specific rule violation while the

matter is handled on the property, is fatal to the employee's case and the claim must be dismissed out of hand. See Docket No. MW-19753 citing Awards 14754 (House), 13283 (House), 13741 (Dorsey), 14118 (Harr), 14772 (Dorsey) and 19773 (Ritter). No authority has been presented to compel this Referee to alter his prior Award.

It is interesting to note that the employees have even failed to cite a specific rule violation in the Submission to this Board, or in its Rebuttal Brief. Of course, a specific citation at that late time would not cure the earlier procedural defect. See Awards 18964 (Dugan), 13741 (Dorsey), 15835 (Ives).

But, in this case, even if a failure to cite a specific rule violation on the property were not procedurally fatal, this Board would still be unable to interpret and apply the agreement, being wholly without a citation to the portion of the agreement allegedly violated. See Award 18879 (Franden).

Inasmuch as this claim is disposed of on the procedural grounds noted above, no determination is made concerning other issues raised by the parties.

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 claim be dismissed for reasons stated in the Opinion.

A W A R D

Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1973.