

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19970
Docket Number CL-19767

C. Robert Roadley, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7088)
that:

1) Carrier violated, and continues to violate, the Clerks' Rules Agreement when it arbitrarily and without conference, negotiation or agreement between the parties, transferred work from the Regional Data Office in Aberdeen, S. Dakota, Seniority District No. 155 to the Regional Data Office in Minneapolis, Minnesota, Seniority District No. 150.

2) Carrier shall now be required to compensate each of the following employees for eight (8) hours per day at the rate of the position held at the time the work was arbitrarily transferred for each regularly assigned work day of their positions from May 3, 1971 until the violation is corrected:

Frank W. DeWalt
Anton J. Sanders
Anton M. Waldt
Kenneth R. Casteel
Donald D. DeWalt

OPINION OF BOARD: There is no dispute in this case as to the Carrier action that is the subject of the claim. On April 30, 1971 certain positions were abolished in the Aberdeen, South Dakota Regional Data Office. The work of the abolished positions was then transferred to and absorbed by clerical positions in the Minneapolis Regional Data Office. Each of these offices are in different Clerical Seniority Districts. Petitioner is alleging that Carrier violated the Agreement by so transferring the work without conference, negotiation or agreement.

The Carrier, in defense of its position, asserts that this dispute is not properly before us in view of the fact the February 7, 1965 National Agreement covers the matter of transfer of work from one seniority district to another and contains provision for resolving disputes thereunder by Article VII of such Agreement. Notwithstanding this assertion, Carrier further avers that, during the handling of this matter on the property, Petitioner did not cite a schedule rule and/or agreement "that either individually or collectively, in whole or in part, " was violated. It was not until the matter came before this Board that Petitioner made reference to specific Rules in the Agreement that allegedly were violated.

Petitioner, on the other hand, argues that Carrier cannot rely on the provisions of the February 7, 1965 Agreement since it did not adhere to certain preliminary requirements of such Agreement prior to transferring the work in question. Additionally, Petitioner in not prosecuting this matter on an alleged violation of the National Agreement but on the basis of alleged violations of the Clerks' Rules Agreement.

We will dispose of this matter on procedural grounds without reaching a determination concerning the jurisdictional issue.

A thorough review of the record before us shows that, during the handling of this dispute on the property, the Organization did not identify which Rules in the Agreement had allegedly been violated but merely asserted "...a violation of the provisions of the seniority and other related rules." It is a long established principle of this Board that failure to assert the specific Rule, or Rules, allegedly violated while the matter is being handled on the property is fatal to the claim when presented to this Board. See Awards 14754, 13282, 13741, 14118, 14772 and many others. We will accordingly dismiss the claim on the basis of the procedural defect.

In view of the fact that the claim is disposed of on procedural grounds, no determination is made regarding the 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

The claim be dismissed for reasons stated in the Opinion.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulke
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1973.