

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19999
Docket Number CL-20098

Irving T. Bergman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Bangor and Aroostook Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7231) that:

1. Carrier violated Rules 1, 3 and 29, among others of the Clerks' Agreement, signed September 21, 1950, as amended, when it abolished the position of "Switchboard Operator" in its General Offices, at Bangor, Maine and unilaterally distributed the remaining work to other seniority districts and to employees fully exempted from all the rules of the agreement.

2. Carrier shall be required to compensate Mrs. Pearl H. Johnston, incumbent of the abolished position for all pay losses, including subsequent wage increases, fringe benefits, insurance premium payments, vacation credits, holidays and interest at 6% compounded, continuous from November 15, 1971 until rectified.

OPINION OF BOARD: We will first dispose of Petitioner's contention that Carrier violated the time limit provisions of Article V of the August 21, 1954 Agreement. Claim was initiated under date of November 17, 1971, substantially as in the Statement of Claim before the Board, and was denied by Carrier's Treasurer in letter of November 26, 1971. Claim was appealed on December 14, 1971 by the Organization's General Chairman to the Carrier's Manager of Personnel. A two-day conference, January 26 and 27th, 1972, was held between the parties after which, under date of March 24, 1972, Carrier's Manager of Personnel advised that the claim remained denied. In letter to that Carrier Officer on May 3, 1972, the General Chairman directed attention to the Carrier's violation of the Time Limit rule. Under date of May 9, 1972, the Manager of Personnel advised the General Chairman, in part, as follows:

"This was handled during our conference January 26 and 27, 1971, was denied verbally at that time and written confirmation of my denial was given you in my letter of March 24, 1972, which is within the time limitation rule."

This issue has been resolved against the Carrier in National Disputes Committee Decision 15, i.e.:

"The National Disputes Committee rules that there was no extension of the time within which the Superintendent was required to render his decision on appeal, and finds that such decision was not rendered within the applicable time limit. In this connection the National Disputes Committee points out that where either party has clearly failed to comply with the requirements of Article V the claim should be disposed of under Article V at the stage of handling in which such failure becomes apparent. If the Carrier has defaulted, the claim should be allowed at that level as presented; and if the employee representatives have defaulted, the claim should be withdrawn.

DECISION: The claims shall be allowed as presented, on the basis of failure of the Carrier to comply with the requirements of Article V of the Agreement of August 21, 1954."

We likewise find there was no extension of the time limits within which the Manager of Personnel was required to render a decision in writing from the date the claim was presented to him on appeal. Verbal denials are not afforded in the language of the Time Limit rule. (Accord Awards 15457, Kenan; 14689, Englestein; 14758 Ritter; 17083, Jones; 19096, Hayes.)

In compliance with National Disputes Committee Decision 16, the claim is payable under the provisions of the Time Limit rule from the date of claim, November 15, 1971, up to the date of the receipt of the denial letter dated March 24, 1972 by Carrier's Manager of Personnel.

With respect to the merits of the Claim: We note that the same parties were involved in Docket CL-19900, resulting in Award No. 19783, in which Petitioner's claim was based on the contention that certain work of an abolished position of Clerk-Typist was transferred across seniority district lines to the position of Switchboard Operator and other duties thereof given to an employee whose position was excepted from the Agreement. In Award 19783, it was held that Carrier had violated Rule 1 (b) of the Agreement "when it transferred part of the work involved to an employee in another seniority district and assigned the remaining work of the abolished position to a non-contract employee, without conference and agreement with the Organization." as provided by Rule 29.

In this dispute, effective November 15, 1971 the Carrier transferred certain duties back from whence they originated and discontinued the performance of certain other duties (switchboard operation) by means of technological changes (institution of direct telephone service to each individual department and office.)

Carrier states in this dispute:

"Based on the precise language of Section 1, Article III of the February 7, 1965, Agreement, it appeared that this Agreement took precedent over and superseded Rule 3 and 29(a) of the Rules in effect on the property. It was on the basis of this interpretation that the transfer of work from the Disbursement Section Seniority Roster of the Accounting Department was made to the Treasury Department. The manager authorizing this transfer of work felt that it was accomplished in accordance with the provisions of this National Agreement. However, on page 10 of the agreed upon interpretations of the February 7th Agreement, it stipulated that implementing agreements will be required in the following situations:

- '(a) Whenever the proposed change involves the transfer of employes from one seniority district or roster to another as such seniority districts or rosters existed on February 7, 1965.
- (b) Whenever the proposed change, under the agreement in effect prior to February 7, 1965, would not have been permissible without conference and agreement with representatives of the Organization.'

"When the restriction covered by paragraph (b) above was discovered, it was then apparent that the transfer of work from Accounting to Treasury was in violation of the Agreement of February 7th as well as Rules 3 and 29(a) of the work rules in effect on the property. There was no implementing agreement providing for the transfer, therefore, the Carrier had no other alternative than to return the work to the seniority district from which it came and where it still belonged."

Carrier further states:

"Obviously the work was improperly assigned to the Switchboard Operator and was restored to the seniority district where it belonged."

Carrier restored the work which it required to be performed to the seniority district from which it had been improperly transferred, which was a proper restoration and one upon which the Petitioner had based the complaint in Docket CL-19900 and upon which a sustaining decision was rendered in Award 19783. The question is moot and, therefore, we dismiss the claim for all dates subsequent to March 24, 1972.

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 Carrier violated the Agreement to the extent indicated in the Opinion.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1973.