

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20975
Docket Number CL-20803

Louis Norris, Referee

(Brotherhood of Railway, Airline & Steamship
(Clerks, Freight Handlers, Express and Station
(Employees

PARTIES TO DISPUTE:

(
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim, of the System Committee of the Brotherhood
(GL-7558) that:

1. The Carrier violated the rules of the current Clerks' Agreement which became effective March 3, 1970, when it, on April 30, May 1, 2, 3 and 4, 1973, failed to fill the Cashier position at Miles City, Montana Freight Office when the incumbent cashier was on vacation, April 30 through May 4, 1973. Carrier directed Chief Clerk Martin Steiner to suspend work on his own position to perform the duties of the vacationing cashier.

2. The Carrier shall now be required to compensate Martin Steiner Chief Clerk, Miles City, Montana, a day's pay for each day, April 30, May 1, 2, 3 and 4, 1973, at the Chief Clerk's rate, in addition to compensation already received.

OPINION OF BOARD: The basic facts in this dispute are not seriously in question. Claimant is permanently assigned to the Chief Clerk position at Carrier's freight office in Miles City, Montana, with a Monday to Friday workweek, at a daily rate of \$42.43. During the period from April 30 through May 4, 1973, a Monday through Friday assignment, the cashier at this office, rated at \$42.05 per day, was on vacation. During the cashier's absence, Claimant was assigned to her position and was paid at his own higher rate of \$42.43 per day.

Petitioner contends that Carrier violated the Agreement between the parties, and Article 6 of the National Vacation Agreement, and demands compensation to Claimant as set forth in the Statement of Claim.

At the outset, Carrier stresses that the claim appealed to the Board varies substantially from the claim filed with Carrier and handled on the property. Accordingly, Carrier asserts, the instant claim must be dismissed.

The record indicates that the Statement of Claim to this Board asserts for the first time that "Carrier violated the rules... when it . . . failed to fill the Cashier position". This is at variance with the claim handled on the property which alleges that "the Carrier was required to furnish vacation relief for the Chief Clerk position". (Emphasis Added).

During the handling on the property Petitioner's claim related solely to "failure to furnish vacation relief for the Chief Clerk position", and the claim was appealed and conferenced on this basis alone. That claim was timely filed and progressed on the property pursuant to the Agreement. However, the claim now before the Board was never filed, appealed or conferenced on the property; nor did Carrier have any opportunity to defend against it on the property. Additionally, the two claims are markedly different from each other, as are the pertinent facts and applicable principles.

In these circumstances, this Board has held that since the claim now before us was not handled "in the usual manner", as provided in Section 3, First (i) of the Railway Labor Act, the Board has no jurisdiction over the dispute and the claim must be dismissed.

Thus, in Award 14824 (Engelstin), the facts were identical with those involved here, the Board stating:

"Hence, although the Claimants and dates involved are the same, the instant claim differs from the claim on the property, the latter concerns the filling of the vacation vacancy of Mrs. Boyd whereas the claim under consideration involves the filling of positions of Information-Reservation Clerks."

Such variation was held to be substantial and the claim was accordingly dismissed.

In Award 13235 (Dorsey), the Board held:

"We are of the further opinion that Section 3, First (i) of the Act contemplates that the claim denied by the Chief Operating Officer, on the property, is the claim 'which may be referred' to the Board."

In Award 15063 (Ives), we stated:

"The objection raised by Carrier is not merely procedural or technical as the claim before the Board departs to a significant degree from the claim submitted and processed on the property. It is essential that the issues be the same as those which were determined on the property. (Awards 5077, 9343, 10078, 10749.)".

To the same effect, see Awards 14258 (Lynch), 15384 (Ives), 16525 (Devine) and 17911 (Quinn), as well as the many cases cited therein.

Accordingly, in view of this controlling principle and cited precedents, this Board is without jurisdiction and the claim must be dismissed.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 27th. day of February 1976.