

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23563
Docket Number CL-23818

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Airline and Steamship Employees
(
(The Lake Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9313) that:

1. The Carrier violated the effective Clerks' Agreement when on June 14, 1979, it arbitrarily removed Clerk J. Harris from his regularly assigned position as No. 2 Relief Yard Clerk & Checker and Crew Caller - Job No. 244 and assigned him to Job No. 215 - Crew Caller and thereafter declared Job No. 244 vacant.

2. The Carrier shall now be required to compensate Clerk J. Harris for eight (8) hours' pay at the pro rata rate of Job No. 244 - No. 2 Relief Yard Clerk & Checker and Crew Caller commencing with June 15, 1979, and continuing for each and every day thereafter, five days per week, Tuesday through Saturday, that a like violation occurs.

3. The Carrier shall now be required to compensate Clerk J. Harris for eight (8) hours' pay at the time and one-half rate of Job No. 215 - Crew Caller commencing with June 15, 1979, and continuing for each and every day thereafter, five days per week, Friday through Tuesday, that a like violation occurs.

OPINION OF BOARD: Claimant in this case, J. Harris, alleges that he was erroneously assigned to the crew caller vacancy, Job No. 215. This erroneous assignment set up a series of bids and changes in assignments. Claimant, thinking that he had been wrongly assigned to Job No. 215 and because of subsequent events, filed a grievance requesting eight hours' pay for certain days specified in the claim and for time and one-half for others.

The claim was handled in the usual manner, denied by the trainmaster, and appealed to the Supervisor of Employee Relations. A conference was held between the Supervisor of Employee Relations and the Local Chairman on December 5, 1979. At that conference, the Supervisor indicated that he would, after further investigation, give the Local Chairman his decision in writing. On December 19, 1979, he sent a letter to the Local Chairman. That letter reads in pertinent part as follows:

"As stated to you in conference on December 5, 1979, I would investigate this claim further and advise you of my decision in writing.

"Further investigation revealed that Claimant Harris worked Job No. 215 - Crew Caller - for three (3) days on June 15, 16 and 17, 1979. Claimant Harris then worked Job No. 225 on a vacation hold-down on June 18, 21, 22, 23 and 24, 1979.

"If Claimant Harris had remained on his former position, Job 244 - #2 Relief - he would have been displaced by Clerk Palinski on June 24, 1979. Claimant Harris would have displaced to Job 215 - Crew Caller - on June 24, 1979, as it was the only position he could have held.

"Based on this information, Claimant Harris is being allowed four (4) hours pay at Crew Caller rate for June 15, 16 and 17, 1979 for working Job 215.

"In addition, Claimant Harris worked as Crew Caller on June 14, 1979 which is encompassed in Job 244's assignment. Job 244 worked on June 15, 16, 19, 20, 21 and 23, 1979. Again Claimant Harris would have been displaced by Clerk Palinski off Job 244 on June 24, 1979.

"Based upon this information, Claimant Harris is allowed eight (8) hours pay at Yard Clerk rate for June 15 and 16, 1979 for not working Job 244.

"The above allowance will be included in the pay ending December 31, 1979."

Since the Organization has processed this claim to the Board on a procedural violation (that is, that Carrier failed to disallow the instant grievance within the 60 days required by Rule 49), the December 19, 1979, letter becomes critical. Carrier claims that the letter constitutes its denial of those portions of the claim not agreed upon. The Organization argues that it does not. Nowhere in this letter, according to the Organization is the word "denied" to be found, nor should it be so construed by the Board.

A careful reading of the December 19 letter reveals that Carrier did investigate the Organization's claim in detail and that it did agree with the Organization's demands in some areas. Carrier did not have to state specifically that those areas not agreed upon were denied.

It is the opinion of this Board that Carrier, by its letter of December 19, 1979, has met the requirement of denying those portions of the Organization's claim not granted. It is clear from a reading of the letter that Carrier granted certain

portions and denied certain portions of the claim. It is difficult to understand how the Organization could read this letter otherwise, especially when it contains the statement that "As I stated to you in conference on December 5, 1979, I would investigate this claim further and advise you of my decision in writing."

This Board can find no justification for the Organization's claim that a procedural violation took place and the claim must be denied.

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

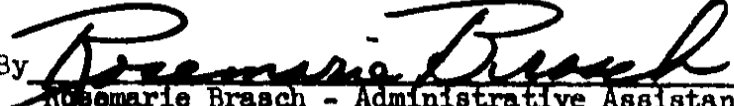
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March 1982.