

Case No. 21      Award No. 21

STATEMENT OF CLAIM:

- (a) On June 1, 1985 the Carrier violated Rule 1 of the Clerks' General Agreement and continues to do so when it transferred work and duties associated with the Stores Department's purchases and related functions to an outside vendor, mechanical and transportation personnel, as well as to non-contract officers of both departments.
- (b) Carrier further violated Rule 23 of the Clerk's Agreement when on June 1, 1985 it transferred the duty of ordering, loading and unloading, warehousing and distribution of materials for the Transportation Department from clerical employees in the Stores Department to employees located in the Transportation Department and non-contract employees of private vendors without proper notice to the General Chairman.
- (c) The Carrier shall compensate Stores Department Clerks A. L. Adkins, Leonard Earwood and William Tuell one (1) hours' pay each at the pro rate of their respective positions for each workday beginning June 1, 1985 and continuing until such time as the work is properly returned.
- (d) In addition, Carrier shall compensate the below listed employee whose position was abolished as a direct result of the aforementioned transfer of work eight (8) hours pay at the pro rata of their former position beginning on the date such positions were abolished and each work day thereafter until this violation ceases and the position is restored. This compensation will be in addition to other compensation of earnings the Claimant may receive during the period of claim.

FINDINGS: This claim arose because, on May 21, 1985, the Manager of the Carrier's West Virginia Division issued a directive which required the direct purchase of all materials from vendors. The vendors then

would ship the ordered materials directly to the location from which the order had originated. Before this directive was issued when a transaction was not made directly with a vendor, the requisition for supplies was forwarded to the Carrier's Store Department, which then ordered the supplies.

The Organization's Local Chairman filed a claim on July 19, 1985 asserting that the Carrier had violated Rules 1 and 23 of the Parties' Agreement.

On September 18, 1985, the Carrier denied the claim. The denial letter, in relevant part, read as follows:

In reference to your letter dated July 19, 1985,  
your file No. 504-586.

Please be advised that the direct purchase of materials or supplies by the using department from a supplier is not a violation of Rule 1 or Rule 23 of the Clerks' General Agreement. Using departments have made direct purchases from vendors for many years, and this has never been an exclusive function of clerical employees in the Stores Department or any other department. Likewise, vendors have for many years delivered material to offices and departments within a building. When purchases are made by the using department directly from a vendor, this eliminates the intermediate step of handling by the Stores Department.

There is no violation of the Clerks' General Agreement or any other Agreement; therefore, your claim is declined.

This claim then dragged on for some fifteen (15) years. Presently, this unusually long delay has resulted in several procedural contentions by both parties over and above the merits of the claim itself.

Numerous Awards have held that, when material statements are made by one party and not denied by the other party, the contentions stand un rebutted. The material statements then are entitled to be and are accepted as established fact. This is particularly true, when there is both time and opportunity to deny claims and counter-claims, as is the case here.

The Local Chiarmen and the General Chairman, in the appeal of November 1, 1985, never refuted the substance of the Carrier's denial, as quoted above. The remainder of on-the-property record added nothing to refute the reasons for the Carrier's denial. Therefore, the Carrier's basis for the denial stands as a material fact and unrefuted and, accordingly, the Board must deny this claim.

AWARD

The claim is denied.

*Carl H. Brockett*

Carl H. Brockett  
Organization Member

I DISSENT

Dated: October 9, 2000

*E. Muessig*  
Eckehard Muessig  
Neutral Member

*Jim Klimentzak*  
Jim Klimentzak  
Carrier Member