

SPECIAL BOARD OF ADJUSTMENT NO. 173

Award No. 29
Case No. 34

PARTIES TO DISPUTE: Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Employees

Union Pacific Railroad Company

STATEMENT OF CLAIM: "It is claim of the System Committee of the Brotherhood of
Railway and Steamship Clerks, Freight Handlers, Express and
Station Employees that:

(1) Carrier violated Rule 46 of Agreement effective May 1, 1955 when Agent F. A. Maca, Lincoln, Nebraska, failed to give reason in writing for declining claim submitted in writing on August 13, 1956, the August 13 claim being:

- (1) Carrier violated Rule 1 (b) of Agreement effective May 1, 1955 when on July 17, 1956 they abolished Station Helper position, Lincoln, Nebraska, Class 2, and transferred all work thereof to employes covered by Rule 1(a), Class 1.
- (2) Carrier shall now compensate senior furloughed Class 2 employe, furloughed from Seniority District 61-2, for 8 hours each day at rate of \$284.14 per month July 18, 1956 until such time as position is reinstated and work returned to employes covered by Rule 1(b), Class 2.

(2) For Carrier's failure to comply with Rule 46 "Time Limit on Claims" claim shall now be paid from July 18, 1956 up to and including January 25, 1957 under that rule. Balance of claim shall be paid account violation of Rule 1(b) of the effective agreement."

FINDINGS: The Board, upon the whole record and all the evidence, finds that:

The Carrier or Carriers and the Employee or Employees involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein. The parties to said dispute were given due notice of hearing thereon.

A claim filed "on behalf of the senior furloughed Class 2 employe, Seniority District 61" pinpoints the identity of the aggrieved on a given date with sufficient clarity to satisfy the requirements of Rule 46(1). The language of the Rule does not expressly state or reasonably infer that "the employe involved" must be one who is identified by name. Nothing in the Rule supports the assertion that unless an employe is named he is not involved. So long as the person seeking redress is reasonably ascertainable, the failure to disclose the actual name of the employe involved does not render the claim invalid under Rule 46(1).

Under the plain wording of Rule 46 (1), Carrier is obligated to give its reasons for the disallowance of a timely filed claim or grievance within sixty days from the date of filing. The reason stated may be a good one or a poor one, but some reason must be given. To decline a claim "with no comments" is patently a failure to state any reason. Where, as here, the notice of disallowance does not specify reasons, there is no alternative under Rule 46 (1) but to allow the claim. Accordingly, that portion of the instant complaint which is grounded on a non-compliance with Rule 46 (1), and on the basis of such violation, request payment from July 18, 1956 up to and including January 25, 1957 must be upheld.

The assertion that the transfer to other employees, under the circumstances here encountered, of certain duties formerly performed by the station helper at Lincoln, Nebraska, being occasioned by the abolishment of the latter position at that location, conflicts with the Scope Rule of the Clerks' Agreement is completely lacking in substance.

It suffices to say that when the amount of work in a given classification diminishes to the extent where there is no longer the need of a full time employee in that category, the position may be dispensed with, and such of the incidental duties thereof still existing may be distributed among and allocated to those remaining occupations which, sometime in the past, had embraced such performance as an integral part of the job content.

AWARD:

1. Carrier violated Rule 46 of the Agreement dated May 1, 1955, in failing to give its reasons in writing for declining claim filed August 13, 1956, challenging the propriety of the abolishment of the station helper position, Lincoln, Nebraska, Class 2, and the transfer of work thereof to employees covered by Rule 1 (a), Class 1.
2. Carrier forthwith shall remunerate the senior furloughed Class 2 employee, Seniority District 61-2, for the straight time earnings of said Station Helper position from July 18, 1956 up to and including January 25, 1957.
3. That portion of the claim which seeks payment subsequent to January 25, 1957, on the basis of an alleged violation of Rule 1 (b) of the Clerks' Agreement, is denied.

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/s/ Harold M. Gilden
Chairman

/s/ A. J. VanDercreek
Carrier Member (Specially Concurring)

/s/ C. F. Bignall
Organization Member

Omaha, Nebraska
February 24, 1959