



Award Number 17353

Docket Number CL-17825

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAM-
SHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYEES**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6458) that:

1. Carrier violated the Clerks' Rules Agreement at Milwaukee, Wisconsin, when it failed to use the senior employe to work Assistant Chief Clerk Position No. 09489 on February 18, 1967.
2. Carrier shall now be required to compensate employe Joseph A. Wuerl for eight (8) hours at the pro rata rate of his regularly assigned rate of pay for February 18, 1967.

EMPLOYEES' STATEMENT OF FACTS: Employe Joseph Wuerl, who has a seniority date of November 8, 1950 in Seniority District No. 22, is the regularly assigned occupant of Head Clerk Position 07110 at Muskego Yards, Milwaukee, Wisconsin from 7 A.M. to 4 P.M., Monday through Friday.

On Saturday, February 18, 1967, Assistant Chief Clerk Position 09480 assigned from 3 P.M. to 11 P.M., Wednesday through Sunday, was temporarily vacant. In lieu of calling senior employe Wuerl, Carrier called and used employe F. J. Holzem, a junior employe with a seniority date of May 22, 1964 and regular occupant of Yard Clerk Position 07540 to fill Assistant Chief Clerk Position 09480 that day.

Both Head Clerk Position 07110 and Assistant Chief Clerk Position 09480 are in Seniority District No. 22. Both positions are located in the Muskego Yard Office and are under the jurisdiction and on the payroll of the Agent who bulletins and makes the assignments to those positions.

Claim for eight hours at the pro rata rate of his regularly assigned Head Clerk Position 07110 for February 18, 1967 was filed by employe Wuerl with Agent R. E. Chalifoux and was declined by him in his unsigned letter dated March 13, 1967 on the basis that employe Wuerl was not fully qualified and competent to perform the duties required to the full extent. See Employes' Exhibit "A".

The claim was appealed to Superintendent Terminals R. H. Love on April 21, 1967 and was declined by him in his letter of May 4, 1967 on

Holzem was called. Employee Holzem has a seniority date of May 22, 1964 in Seniority District No. 22 and is regularly assigned occupant of Yard Clerk Position No. 07540 at the Muskego Industrial Control Center, Milwaukee, Wisconsin which is assigned from 3:30 P.M. to 11:30 P.M. Monday through Friday with Saturday and Sunday rest days. Copy of the last bulletin issued prior to the instant claim date advertising Yard Clerk Position No. 07540 is attached hereto as Carrier's Exhibit "C".

Rule 32(g) of the then effective Schedule Agreement between the parties here in dispute reads as follows:

"When additional help is required for overtime work, or when the duties to be performed on overtime cannot be identified with a specific position, employees will be assigned to such overtime in accordance with seniority, fitness and ability, first from the sub-division of the department wherein the work occurs and, secondly, from the entire department." (Emphasis ours)

Claimant Wuerl was not called to fill Assistant Chief Clerk Position No. 09480 on an overtime basis on Saturday, February 18, 1967 under the provisions of Rule 32(g) because he did not possess the fitness and ability to adequately and competently perform and fulfill the duties of that position.

There is attached hereto as Carrier's Exhibit "D" copy of letter written by Mr. S. W. Amour, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of August 15, 1967.

(Exhibits not reproduced)

OPINION OF BOARD: The Claimant, a senior employee, filed a claim with the Agent on February 18, 1967, for eight hours pay at the pro rata rate, account "Run around—not being called for extra work—younger clerk Frank Holzem worked Rack Position 2nd Shift." Claim was denied and, thereafter, the Local Chairman on April 21, 1967, appealed it to the Superintendent, who declined it on May 4, 1967. Eventually the Vice President-Labor Relations declined the same on August 15, 1967.

Our purpose in reciting these various dates is to highlight the procedural issue raised by the Carrier. It is the latter's argument that the instant claim is defective in that it was not presented "to the officer of the Carrier authorized to receive same within 60 days from the date of the occurrence on which the claim or grievance is based", Article V, Section 1(a) of the August 21, 1954 National Agreement.

On April 29, 1966, the Carrier furnished the Organization with a list of Carrier Officers to whom claims or grievances should be presented in the first instance and on appeal. Therein, the Superintendent is listed as the Carrier Officer authorized to receive a claim or grievance in the first instance. Relating this to the instant grievance, the facts indicate that the employee filed the claim initially with the Agent. The Superintendent was not presented with the claim until April 21, 1967, 62 days after the occurrence on which it was based.

In this posture, it is our view that the instant claim is barred pursuant to Section 1(a) of Article V of the National Agreement. (See Awards 16697 and 16014). We would also cite NDC Decision 5, wherein it was held that:

"If the issue of non-compliance with the requirements of Article V is raised by either party with the other at any time before the filing of a notice of intent to submit the dispute to the Third Division, it is held to have been erased during handling on the property."

Accordingly, it is unnecessary for us to discuss the merits of the claim.

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
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1969.