

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

WHEELING AND LAKE ERIE RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of D. B. Schnierle and C. C. Nichols, Yard Clerks at Brewster, Ohio for one (1) hour pay each day from March 16th to May 9th, account of their regular eight (8) hour assignment being reduced to seven (7) hours per day in violation of our Rules Agreement."

EMPLOYEES' STATEMENT OF FACTS: "About January 4th, 1938 Management requested conference with the General Chairman of the General Committee to discuss an agreement to reduce the work week from six (6) to five (5) days per week. No agreement could be or was reached to waive or modify agreement rules.

"Petitions were then circulated among the employees for their individual signatures agreeing to a five (5) day work week in the offices; while in the yard service, petitions suggested the reduction of hours from eight (8) to seven (7) per day.

"Among the employees at Brewster Yards, Mr. C. C. Nichols and Mr. D. B. Schnierle did not sign any waiver to the eight (8) hour rule but were arbitrarily placed on the short-hour schedule to conform with the changed hours of others who had signed said petition waiving the eight (8) hour rule."

CARRIER'S STATEMENT OF FACTS: "Because of the business recession, Carrier's railway operating revenues declined from \$1,335,000 in the month of October, 1937, to \$636,000 in the month of February, 1938, and it became necessary for Carrier to reduce drastically its operating expenses. As unemployment was wide-spread and relief rolls filled to overflowing, the Carrier cast about for some method of retaining in its service as many of its employees as possible. It was suggested by some of the members of the Carrier's clerical force that instead of throwing the younger employees out of work through layoffs, the older employees might share the available work with the younger men through a shorter work week or work day. Accordingly petitions were circulated among the clerical employees over the entire line of the carrier, requesting that the latter express preference between a reduced work week or work day or a reduction in force, and approximately 99% of the employees affected indicated their preference for a reduced work week or work day.

"At this time there were thirteen employees in the yard force at Brewster, Ohio, among whom were claimants. On March 12, 1938, all of these employees, except claimants (or approximately 85% of the yard force) signified their willingness to assist the younger employees by working a 7 hour day by signing a petition, a certified copy of which is attached hereto and

group of yard employees. Instead of abolishing positions and turning its younger employees out to swell the millions in the bread lines, it complied with the desire of 85% of the force at Brewster who undertook to share the available work. It would be unfair to all concerned if claimants were to profit by their refusal to cooperate with this plan.

"CONCLUSION. For the foregoing reasons, the carrier submits that this claim should be denied."

There is in evidence an agreement between the parties bearing effective date of May 1, 1937.

OPINION OF BOARD: The record in this case shows that the provisions of Rule 26 of the current agreement were not complied with when the Carrier failed to compensate employes Schnierle and Nichols on the basis of eight (8) hours per day during the period in question. Even though 99% of the clerical employes agreed to accept a reduction in assigned days or hours below those guaranteed by the rules of the agreement, and regardless of whether the petitions agreeing to such reductions in assignments were circulated among the employes at the instance of the carrier or by the employes themselves, these other clerical employes, by such action, could not and did not change or modify the provisions of the current agreement.

However, in view of all the facts and circumstances of this particular case, the Board feels that the claim should be disposed of by sustaining it in principle and dismissing the claim for pay.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 Rule 26 of the current agreement was not complied with.

AWARD

Claim sustained in principle; claim for pay dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of March, 1940.