

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

THE ERIE RAILROAD COMPANY

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

1. That Carrier violated the provisions of the Clerks' Agreement when on September 1, 1938 and September 1, 1939, it created temporary position designated as Assistant Agent and filled such position by the appointment of the Transit Clerk rather than as provided by agreement rules.

2. That rate for such position shall now be established in accordance with the provisions of the agreement, and employees affected by said violation compensated for wage loss suffered from September 1, 1938 to December 1, 1938 and from September 1, 1939 to December 1, 1939."

EMPLOYES' STATEMENT OF FACTS: "Effective September 1, 1938 and September 1, 1939 position of Assistant Agent was created by the Carrier at Monmouth Street, Jersey City, N. J. as a seasonal position and was filled by appointment of the incumbent holding position of Transit Clerk. The position works under the supervision of the Local Freight Agent and the Assistant Local Freight Agent. The duties of the position generally is as follows:

- Make up delivery sheets.
- Make out cutting or switching lists.
- Card cars to destination from hold yard or auction siding.
- Make up miscellaneous charge bills, collect for cars held, collect demurrage charges and turn over cash to the cashier.
- In the absence of Yard Clerk, who formerly worked at Monmouth St., prepare yard program.
- Handle team track deliveries, contact receivers and prospective auction buyers and handle complaints of receivers as to improper and late placement of cars.
- Check up on short cars.
- Supervise coopers in coopering damaged freight and other related clerical work.
- Prepare track location layout of all cars in yard.
- Report daily team track unloadings showing damage to packages, or rejected packages.
- All clerical work pertaining to grape yard operation."

"This letter is to advise that this Board has decided not to join in a joint presentation of this case to the National Railroad Adjustment Board, but prefers to submit this case ex parte. This letter is to advise that we are submitting this case ex parte to that body.

Yours very truly,

(signed) J. J. Schreur
General Chairman.'

"We are not informed as to the circumstances under which the employees have decided to submit the case ex parte after the Railroad had agreed to a joint submission in accord with their previous request, inasmuch as this case had been discussed with the employees and they had been advised of the circumstances under which position was established as outlined in this statement.

"This claim is not supported by any negotiated rule and should be declined for the following reasons:

- "1. The temporary position of Assistant Agent was established during September 1938 and September 1939 to perform supervisory work and other duties incidental thereto in the same manner as during the years 1934 to 1938 and in the same manner as had been done during the year 1928 and many years prior to that time.
- "2. There was no work removed from under the scope of Rules and Regulations effective September 1, 1936, because this job and the work incidental thereto has customarily been performed by the Assistant Agent.
- "3. H. H. Malone was selected as Assistant Agent because of his qualifications, and his fitness and ability, to perform all of the duties of the job.
- "4. Rule 1, page 9, of the Rules and Regulations 9-1-36, distinctly provides—"These rules shall govern the hours of service and working conditions of the following employees * * *," and accordingly is applicable to employees and not to work as is alleged, for the reason that many railroad employees who are not within the scope of these rules regularly perform work that can readily be classified as being work of a 'clerical nature,' for example, even officials of railroads on many days work substantially the full day in preparing and assembling data incidental to the duties of their position, and it was never intended that the preparation and assembling of data under such circumstances would be within the scope of these Rules. The Assistant Agent at Monmouth Street comes within this classification.
- "5. Statement of H. H. Malone (which is herein quoted), who held the position in 1938 and 1939 and who bid for and was assigned to the clerical position in 1940, definitely demonstrates that supervisory duties were removed in 1940 and a clerical position assigned to take up remaining items of a clerical nature.
- "6. Previous awards of the Third Division support the position of the Railroad, particularly Awards 615, 809 and 1314."

OPINION OF BOARD: It appears from the submissions in this case that when a temporary position incident to the handling of grapes at Monmouth Street, Jersey City, New Jersey, was established for the period September to December, 1940, the parties were not in disagreement thereupon. The position of clerk was bulletined and assigned according to the provisions of the current agreement. In view of this situation and based upon the record in this particular case, the Board is not disposed to interfere with the actions of the Carrier in respect to the periods in 1938 and 1939 covered by this claim.

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 employes involved in this dispute are respectively carrier and employes 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 action of the Carrier in filling the temporary position incident to the handling of grapes at Monmouth Street, Jersey City, New Jersey, during the period September 1 to December 1 in the years 1938 and 1939 will not be disturbed.

AWARD

Claim for compensation denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of October, 1941.