

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

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

LITCHFIELD & MADISON RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that,

(1) During January 26, 27 and 28, 1944, the management removed work of preparing statistics relative to earnings of employees, Withholding Tax, and preparation of Income Tax Slips, out from under the Scope and Operations of the Agreement, and assigned said work to an Exception Position Employee, Exempt from all the General Provisions of the Agreement, (except seniority) who worked a total of 18 hours on above named work.

(2) On or about February 15, 1944 and between February 21, 1944, inclusive, the management removed work of compiling rough draft time sheets for employees back pay rolls, and assigned said class of work to an employee designated as an Official, bearing title of Asst. Auditor, which position is not covered by our Agreement, and said employee holds no seniority rights under the terms of said Agreement.

(3) That the regular clerical employees named in the original claim, (G. J. Blaesser, Louis Smoltz, Wm. Smoltz, and Iona Wood) adversely affected by reason of this violation of Agreement, be compensated for 38 hours overtime, at time and one-half rate, which is the amount of time required by these two employees that performed this work, which should have been performed by employees covered by Agreement, had it not been removed from the Scope of the Agreement.

(4) That the 38 hours claimed as overtime, at time and one-half rate be divided to employees covered by Agreement as follows: Eighteen (18) hours performed by Excepted Position Employee, Miss Nona Flynn. To G. J. Blaesser four and one-half (4½) hours. Wm. Smoltz four and one-half (4½) hours. Louis Smoltz four and one-half (4½) hours. Iona Wood four and one-half (4½) hours.

Twenty hours for work performed by Asst. Auditor to G. J. Blaesser.

EMPLOYEES' STATEMENT OF FACTS: On January 26, 27 and 28, 1944, and on or about February 15, and between February 21, 1944, inclusive, work consisting of preparing statistics relative to earnings of employees withholding tax, and preparation of income tax slips, compiling rough draft time sheets for employees back pay rolls, was removed out from under the Scope of Agreement, and said work assigned to an Excepted Position Employee, and the Asst. Auditor. The Asst. Auditor being classed as an Official.

The facts appear to be that these claimants undertook to perform the work in question, and upon being checked by the official of the company in charge, the computations as made by the claimants did not balance with the audited accounts reflected in the general ledger, and as the work in this line attempted to be done by these claimants did not check and was not in keeping with the audited accounts reflected in the general ledger, their work was of no avail in preparing the necessary returns for the Internal Revenue Department. Miss Flynn and Mr. Wooster, who did the work, found numerous errors which required the work done by claimants to be done over. As indicated, the work included the preparation of an accurate account and actual results. As stated, it involved compliance with the rules and regulations of the Department of Government for which the company was responsible in seeing not only that the reports were accurate and in compliance with government regulations, but also that such reports were filed with the proper officials on a certain specified date, under the penalty provisions of the particular governmental department. Had the company used the results of the work of these claimants in making its report to the governmental department it would not have reflected the truth or the facts and would have subjected the company to penalty. Under the regulations of the Revenue Department of the government payment of a claim, such as is set up here, would not be allowed as a proper expenditure in the computation of income tax.

WHEREFORE, the Litchfield and Madison Railway Company denies any indebtedness to the said claimants.

In view of the facts set up in the foregoing answer, the Litchfield and Madison Railway Company prays your honorable body to deny the claim of the above-named claimants, and to dismiss the petition because the facts do not support the claim.

OPINION OF BOARD: This dispute concerns the performance of some thirty-eight hours clerical work by the Assistant Auditor and his Secretary in January and February, 1944, which it is alleged was removed from clerical employes.

The Carrier states the work, consisting of the preparation of income tax slips and computations, was initially performed by clerks, but, when checked, it was found the computations did not balance; also, the importance of the work, plus the time element, made it necessary to utilize the services of the Assistant Auditor and his Secretary to complete it.

The facts, as stated by the Carrier, present a situation different from that presented by the Organization, which alleges the removal of work, thereby depriving claimants of performing the work in question.

The statements of the parties are conflicting as to the character of the work, time involved, whether or not the work initially performed by claimants was properly done, and the necessity for the Assistant Auditor and his Secretary doing the work. In view of the conflicting record, the case should be remanded to the parties for development of the facts and for disposition of the dispute on the basis of the facts.

If it is developed that claimants Blaeser, Wm. Smoltz, and Wood were deprived of work encompassed by the Agreement, which would not include work normal and incident to the position of Assistant Auditor, they should be compensated for the time (as developed by the facts) required to perform the work.

No authorization has been received from Louis Smoltz and the Board will not consider his 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

Claim will be remanded to the parties for development of facts and disposition in accordance with the Opinion.

AWARD

Claim disposed of in accordance with Opinion of Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 18th day of January, 1946.