

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement, when, on November 28, 1943 and thereafter, it failed to call Clerk, Ed Mans to perform overtime outlined in our "Statement of Facts" and that Employee, Ed Mans be compensated for all monetary loss sustained account of failure of the Carrier to call him for the performance of this work.

EMPLOYEES' STATEMENT OF FACTS: Commencing on November 28, 1943, it was necessary to work certain employees overtime at Great Falls, Montana, in connection with back pay for Engineers and Firemen, which was allowed them under a decision of the National Railroad Adjustment Board Award 7594. This Award allowed Engineers back pay compensation account employees other than Engineers performing service on roadway machines. In order to properly apply this Award, it was necessary to determine the machines involved and the dates these machines worked, number of hours worked, etc; also, to obtain the names of the Engineers who were to receive payment under the Award, make time allowances, past allowances in time book and prepare payrolls.

The time books for Sections, Extra Gangs, District Gangs and B & B Gangs are records regularly compiled in the Superintendent's Office in Great Falls and the work of assembling the necessary information from these Track and B&B Time Books was performed by employees in the Superintendent's Office.

The records which formerly had been compiled in the Roundhouse Office at Great Falls and known as "Sixteen-Hour Books" and what is called the "Sick" and "Layoff" Books which were necessary to determine the names of the Engineers who were to receive payment under this award covering the territory of what was known as the old Butte Division, were brought over to the Superintendent's Office and Road Clerk Shaffroth was used on an overtime basis to determine from information shown in these Hour Books, the names of Engineers to whom payment should be made. Clerk Shaffroth was used on this work until December 19, 1943, and the work was then completed by Clerks Swanstrom and Tewmey, two other employees in the Superintendent's Office. The three clerks used in the Superintendent's Office to determine the

It is, therefore, the position of the Carrier that this claim in behalf of Ed Mans covers an issue which has already been adjudicated by your Board with this Carrier and the Brotherhood of Railway and Steamship Clerks as parties. This being the case, we quote from the decision of the Supreme Court of the United States, Number 970, October term, 1945, in re Abraham Fishgold, Petitioner, vs. Sullivan Drydock & Repair Corporation, Roy Granata, as Acting President and Acting Treasurer of Local 13, Industrial Union of Marine and Shipbuilding Workers of America, C. I. O. The Court in this decision said:

"That issue was adjudicated, with the union as a party. Hence if the union had thereafter instituted a separate suit for an interpretation of the agreement, it would be met with the plea of res judicata. And that plea would be sustained, for the prior decision was on the precise point which the union sought to relitigate and was adverse to the union. And both parties to the agreement—the union and the corporation—were parties to the prior suit. This elementary principle has long been recognized. Black, The Law of Judgments (2d ed.) pp. 764, 821, 936. As stated in *Cromwell v. County of Sac*, 94 U. S. 351, 352, a prior judgment 'is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose'. And see *Rooker v. Fidelity Trust Co.*, 263 U. S. 413, 415; *Grubb v. Public Utilities Commission*, 281 U. S. 470, 479; *Stoll v. Gottlieb*, 305 U. S. 165; *Chicot County Drainage Dept. v. Baxter State Bank*, 308 U. S. 371, 375, 378."

The Carrier, therefore, believes that your Honorable Board cannot do other than decide that inasmuch as the issue herein has already been adjudicated by you, the matter must be considered as closed upon the docket of your Board.

OPINION OF BOARD: The work involved in this claim is the same as that involved in Award 2999.

The Carrier had certain clerical work in the Superintendent's Office performed by Clerk H. C. Shaffroth. In Award 2999, the Brotherhood took the position that Clerk Emery Smith was "the proper employe to perform the work," Smith being senior to Shaffroth. The claim came to this Division and was sustained.

Concurrently with the progressing of the claim involved in Award 2999, the Brotherhood was progressing the claim of Ed Mans for failure to be called to perform this same work, asserting when the claim was filed here, that "this work rightfully belongs to Roundhouse Clerk, Ed Mans."

The Brotherhood's contention is that it has two claims in connection with one violation, "that is, Ed Mans was entitled to compensation on account of the work being removed from his regularly assigned position, and, after the work had been removed from this position the Carrier again violated the agreement by failing to call the Senior Employee in the Superintendent's office to perform this work".

The fallacy of this argument is obvious. There could be only one man who was the "proper employe" to do this work. If the proper employe was Smith, then it could not be Mans. If Mans was entitled to it, then Smith was not and Smith acquired no rights and suffered no loss because Shaffroth did it.

The Brotherhood in progressing the claim involved in Award 2999 put its finger on Smith and said he was "the proper employe to perform the work". Having been sustained in Award 2999, it now undertakes to say in effect that neither Shaffroth nor Smith, but Mans was entitled to perform the work. Having elected to claim the work for Smith, it cannot now claim it for Mans. The fairness of such a finding is too clear to require discussion.

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 Employees involved in this dispute are respectively carrier and employees 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 this claim is denied because of the previous position taken by the Brotherhood in Award 2999 in asserting that Clerk Emery Smith was "the proper employe to perform the work".

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of October, 1946.