

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

THE LAKE TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerks' Agreement at Lorain, Ohio, when it permitted and required employees not covered by the rules of the Clerks' Agreement to perform work coming within the scope thereof; and

That Carrier shall now compensate employee Joe Brove one day's pay each, January 28, 1946, to February 2, 1946, inclusive, at the employees regular rate.

EMPLOYEES STATEMENT OF FACTS: During the period January 28th to February 2nd, 1946, employee Joe Mitock holding a clerical position coming within the scope and coverage of the Clerks' Agreement took a portion of his vacation. The carrier instead of calling and utilizing the services of a Clerk to perform the necessary work of Mr. Mitock's position permitted and required the Yardmaster, an employee not covered by the Clerks' Agreement to perform such work. The carrier also assigned a portion of the employees work to the Crew Dispatcher, an employee covered by the Agreement, but holding an entirely different position.

POSITION OF EMPLOYEES: There is in effect between the parties an Agreement bearing effective date of February 1, 1945, which contains the following rules:

Rule 1 (Scope) reads as follows:

"These rules shall constitute an agreement between The Lake Terminal Railroad Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and shall govern the wages, hours of service and working conditions of the following employees of The Lake Terminal Railroad Company at Lorain, Ohio, subject to such modifications as are indicated herein.

Employees Affected

"CLERKS, Being those employees who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements and similar work, and to the operation of office mechanical equipment and devices in connection with such duties and Weighmasters, Messenger-boys and Office-boys.

crews January 28th, one crew January 29th, two crews January 30th, one crew January 31st, two crews February 1st, and one crew February 2nd, compared with an average of thirty-five crews daily under normal operations.

POSITION OF CARRIER: During the period of this claim, and for some time prior thereto, the Assistant Superintendent had a stenographer. This stenographer was on vacation January 28th to February 2nd and as there was no work to be done, his place was not filled that week. This is in accordance with Article 6 of Vacation Agreement dated December 17, 1941. Further, the Claimant was not the senior man and in the event the position of Stenographer would have been filled he would not have been called for the job. The Claimant also was not qualified to fill the position of Stenographer.

For the foregoing reasons, the Carrier submits that the claim should be denied.

OPINION OF BOARD: Claimant was a Yard Dispatcher prior to January 20, 1946, at which time a strike by the employees of the National Tube Company, the largest industry served by the Carrier, brought about a material reduction of force. Claimant was furloughed on this date. It appears that the Assistant Superintendent had a stenographer who was on vacation from January 28 to February 2. Due to the strike, the position was not filled. Claimant contends that he was entitled to the work and asks for the pay of the position for the six days here involved.

It appears that clerical work of the position was performed by the Chief Crew Dispatcher, an employee under the Clerks' Agreement. The remaining clerical duties were performed by a Yardmaster, an employee not under the Clerks' Agreement. We think, under this record, the performance of a part of the work by the Chief Crew Dispatcher while the assigned occupant of the position was on vacation is in accord with the National Vacation Agreement of December 1, 1941, and can afford no basis for a claim.

With respect to that portion of the work performed by the Yardmaster, an employee not under the Agreement, our conclusion is to the contrary. The position of stenographer to the Assistant Superintendent was not abolished. It was an existing position under the Clerks' Agreement. The fact that the occupant of the position was on vacation makes it no less so. Under these circumstances, the Carrier cannot properly assign the work to a position not under the Agreement, whether the work was incidental to the position to which it was assigned or not.

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 the Agreement was violated as alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of March, 1947.