

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

R. E. Kopenhaver, Usher, 30th Street Station, Philadelphia, Pennsylvania, and all others affected be compensated for all monetary loss sustained at punitive rate, beginning ninety days prior to December 3, 1945, and all subsequent dates until adjusted, because of the assignment of usher's work to Station Masters in violation of the Scope of the Rules Agreement. (Docket E-344)

EMPLOYES' STATEMENT OF FACTS: There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act. This Rules Agreement will be considered as a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The claimant, R. E. Kopenhaver, Usher, was assigned to regular position of usher, 30th Street Station, Philadelphia, Pennsylvania, tour of duty 7:00 A. M. to 3:30 P. M., one half hour for lunch on the date the claim was instituted.

The duties of an usher shown on Bulletin advertising such position are as follows:

"To be familiar with stops and destinations of trains and geography of railroad, assist and direct passengers, speak good English and be able to announce clearly and distinctly over the microphone and off-line connections of inward and outward trains, and be familiar with signs and other facilities."

There are two platforms at 30th Street Station, Philadelphia, Pennsylvania, designated as the River Line Platforms, one Northbound and one Southbound. During the period involved in this claim between the hours 4:00 P. M. and 12:30 A. M., an Usher, who is covered by the Scope of the Rules Agreement, referred to above, performed the duties of an Usher on the Northbound platform and an Assistant Station Master, who is **not** covered by the Scope of the Rules Agreement, referred to above, performed exactly the same duties on the Southbound platform. These duties performed by the Assistant Station Master were formerly part of the duties of a position of Usher which was abolished.

Since no claim for compensation on behalf of any employe other than Kopenhaver has ever been filed with the Carrier in the manner provided in paragraph (a) of Rule 7-B-1, it is clear that such claim "will not be entertained nor allowed" by reason of the provisions of paragraph (b) thereof.

The Carrier respectfully submits, therefore, that it was not required under the provisions of the applicable Agreement to establish an additional position of Usher at 30th Street Station, and that Claimant R. E. Kopenhaver or any other employe sustained any wage loss as a result thereof.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement Between the Parties and To Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that the work involved herein is not such as accrues to Ushers exclusively in accordance with the provisions of the applicable Agreement, but on the contrary, is work incident to and directly attached to the primary duties of the class or craft of Station Masters and Assistant Station Masters; that the performance of such work by employees of that craft or class does not constitute a violation of any provisions of the applicable agreement; and that in any event, neither the named Claimant, nor any other employe, is entitled to any compensation under the circumstances of this case.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter.

Exhibits not reproduced.

OPINION OF BOARD: Notice of Petitioner's intention to file this claim was given the Carrier on September 23, 1947, and, under Rule 7-B-1 (a) of the Clerks' Agreement, the monetary claim involved cannot, in any event, be allowed to be effective prior to 90 days preceding the date of said notice.

It is contended that the claim was prosecuted on the property in the name of R. E. Kopenhaver only, whereas, the claim here considered is filed on his behalf and "all others affected" by the alleged violation, and that this is not in keeping with the requirement that disputes be first dealt with on the property before being presented to this Board. There is technical merit in this contention, but it is quite clear that the principle of the claim was fully presented and developed on the property. We think the matter of compensation to persons affected by an alleged violation of the Agreement, is a mere incident of the claimed violation. See Awards of this Division, Nos. 1646, 2282, 3256, 3376, 3873, and 3908. We are therefore, of the opinion that the claim, as filed here, may properly be considered.

The claim is filed in behalf of ushers, specifically included in the Scope Rule of the Clerks' Agreement, who, it is contended, are entitled to do the work falling within that classification, at the 30th Street Station of the Carrier, in Philadelphia, Pennsylvania, some of which, it is claimed, was assigned to an assistant station master, an employee covered by another agreement, in alleged violation of the Clerks' Agreement.

There are two platforms at 30th Street Station, one to provide for northbound, and one for southbound, passenger traffic, on both of which ushers' work is required to be performed, and to which work ushers were originally assigned. Subsequently the usher's position on the southbound platform was abolished, and the work of the abolished position assigned to an assistant station master, which work, the Carrier maintains, was incident and attached to his regular duties, and which he could perform under the provisions of sub-section (2) of Rule 3-C-2 (a) of the Clerks' Agreement. However, the Carrier overlooks another provision of the same rule, sub-section (1), which provides that where, as in this case, other positions, under the Clerks' Agreement, which could do the work of the abolished position or positions, existed at the location where such work was to be performed, such work should be assigned to such position or positions, clearly indicating that where such position or positions existed, the employees named in sub-section (2), aforesaid, were not entitled to perform such work. See Awards 4043, 4044, and 4045 of this Division. this day made.

There can be no doubt but that the assistant station master was assigned to, and actually performed, ushers' work on the southbound platform. It is contended that the work of that character he performed consumed a little in excess of two hours' time; but the docket indicates that in excess of twenty trains were handled on each of said platforms on the trick here involved, which indicates that it was not the character of work which could be compressed within a given period of time. It is reasonable to assume that the twenty or more trains ran at intervals throughout the day. The Petitioner claims that the time consumed was approximately six and one-half hours.

We are of the opinion that an usher should have been assigned to do that class of work on the southbound platform, as was done on the northbound platform; that a position of that character should have been bulletined and awarded by the Carrier to an employee working under the Clerks' Agreement, in accordance with his seniority rights; and that when it failed to do so, and in lieu thereof assigned said work to an assistant station master, an employee not covered by the Clerks' Agreement, it violated not only the Scope Rule of the Agreement, but also sub-section (1) of Rule 3-C-2 (a) thereof, referred to in the Scope Rule, and by such reference, in effect, made a part thereof. There can be no reasonable explanation of the Carrier's action in assigning that character of work, in the same station, to an usher on one platform, and to an assistant station master on the other; if it was ushers' work, as we think it was, it should have been assigned to them on both platforms.

The docket fails to show that the Claimant, Kopenhaver, lost any time and, therefore, he is not entitled to compensation; but other ushers, working under the Agreement, may have lost time by being deprived of work to which they were entitled, by reason of the Carrier's violation of the Agreement, and the monetary claim should be sustained for their benefit, should they be able to establish that they have lost time. Compensation for lost time should be paid at the pro rata rate of pay. "Time not actually worked cannot be treated at the overtime rate unless the Agreement specifically so provides." See Award No. 3587 of this Division.

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 Carrier violated the Agreement in the respects noted in the Opinion.

AWARD

Claim sustained as limited by the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 10th day of August, 1948.