

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John M. Carmody, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
THE NEW YORK CENTRAL RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the New York Central Railroad, Lines West, that the Carrier violated the Clerks' Agreement.

1. When on February 1st, 1948 the Carrier removed the records and work performed by employees in the Auditor of Passenger Accounts Office coming within the scope of our agreement and assigned such work to Traveling Auditors, Payroll Inspectors, etc., who are not covered by our agreement, for the purpose of preparing a study in a rate increase request, which similar studies had previously been made by employees covered by our agreement in the Auditor of Passenger Accounts Office on an overtime basis, and
2. That the Carrier be required to reimburse Wm. R. Weddigan and 50 other employees directly affected for 117 hours each on overtime bases based on 6000 hours required of the employees excepted from the Clerks' Agreement to complete the study.

EMPLOYES' STATEMENT OF FACTS: For the use of our Traffic Department in connection with a passenger fare study, our Auditor of Passenger Accounts, Mr. Maurice, was instructed to prepare a statement for the month of November, 1947, showing information for all classes of passenger travel (namely, local, home interline and foreign interline) the number of tickets, class, passenger miles and revenue, grouped in fifty mile blocks, each class to be further separated as between tickets good in coaches and pullman cars and one-way and round-trip, also intra-state and inter-state.

In order to prepare this statement, it was necessary for the employees to examine the monthly reports of all Agents and foreign road interline reports, which reports supply the information with respect to the number of tickets, class, passenger miles and revenue, grouped in fifty mile blocks, and information with respect to the separation as between tickets good in coaches and pullman cars and one-way and round-trip tickets, also intra-state and inter-state tickets, which identification of each separation shown in the Agents' reports as enumerated above is covered by a numeral block system to identify the mileage used and a code number system to identify the classification of the kind of tickets sold, as per Exhibits No. 1 and No. 2 herewith attached, which block and code number systems were prepared for the use of the study by the auditor of Passenger Accounts Office in 1942 and which identical instructions had been issued by the Comptroller's Office in this particular study.

In Award No. 3003 the Clerks charged Carrier violated their agreement when it failed to call and use them to transfer a carload of mail. In its Opinion the Board said:

"It will be conceded at the outset that a carrier cannot remove work from the scope of one agreement which properly belongs to employes under that agreement. It will also be conceded that the claimants were employes covered by the Clerks' Agreement who were available to do the work if they had been called. The claim necessarily resolves itself into the question whether the work belonged exclusively to employes coming under the Clerks' Agreement. If it does, the claims should be sustained; if it does not, it is just as evident that the claims must be denied.

"The Organization contends that the work in question is covered by the Scope Rule in the current Agreement. In determining the correctness of this assertion it must be borne in mind that the Scope Rule does not specify the work which falls within the Agreement. That it was intended that certain work did belong to the Clerks is an accepted fact if the agreement is to have any validity at all. On the other hand, the contention that the Scope Rule provides that clerical employes under the Clerks' Agreement shall perform all clerical work has no foundation.

"We think the correct rule is that the Clerks' Agreement reserves all work usually and traditionally performed by this class of employes, and all work in addition thereto which has been specifically reserved to them by the Agreement and subsequent negotiations.

"The Carrier asserts, and the record is barren of any proof to the contrary, that the type of work constituting the subject matter of this claim has not been customarily and traditionally the exclusive work of employes under the Clerks' Agreement. Under such circumstances, we cannot say that the work belongs exclusively to the Clerks."

In Award No. 3867 the Employees charged that the Carrier violated their agreement when it used Traveling Auditors, excepted position holders in the office of the Agent and Freight Auditor, to perform detail work connected with positions fully covered by all rules of the Clerks' Agreement. In this case the Carrier had to prepare a special statement for the Interstate Commerce Commission showing the number of carloads of 8 different commodities loaded on its rails for each of 4 periods of 13 weeks' duration. Carrier put 3 Traveling Auditors on the work of preparing the statement and they were assisted by 7 regular Accountants and Helpers whose accounts were involved. The following is quoted from the Board's Opinion in this case:

"Traveling Auditors were formerly excepted from the scope of the Agreement but are now included in the current Agreement effective April 1, 1945. Even though they are now subject to only five rules of the Agreement and excluded from the operation of the other rules, it cannot be successfully argued that when they were assigned to the work in question it was removed from the scope of the Agreement contrary to a number of awards of this Board.

"The record further shows that to some extent similar work has been done by Traveling Auditors ever since the positions were created, and that this was special work not assigned to any regular position."

Exhibits not reproduced.

OPINION OF BOARD: In 1947 the Passenger Traffic Department of the Carrier requested the Accounting Department to compile specifically indicated ticket and revenue data for its use in passenger fare studies. It was necessary to show, by 50 mile blocks, number of passengers carried, passenger miles, distance each passenger traveled, total revenue, average revenue per passenger

mile and average revenue per passenger, both interstate and intrastate. These data were further broken down to show coach, unrestricted, one way, round trip and various fare classifications.

This was a special report. Such data are not assembled regularly; it is not a part of the regularly assigned duties of the clerical forces. The information, however, is derived from ticket sales records regularly handled and checked by these Clerks.

It is not disputed that on previous occasions, the only ones of record, when somewhat similar reports were required, the work was done by the clerical forces. There were three such reports, in 1938, 1939 and 1942. The Carrier maintains that the 1947 report, dealt with here, was more comprehensive than the others and more complicated. The record shows that it contained 299 pages and was completed in 9 weeks whereas the 1942 report contained 72 pages and required 17 weeks for completion.

The Carrier assigned the responsibility for organizing the report, writing the instructions, setting up the coding procedure and supervising it to a senior Traveling Auditor. The coding work was performed, under his direction, by other Traveling Auditors. These facts are not in dispute.

It is about the coding work that the dispute arises. All of the other work in connection with the report appears to have been done by the clerical forces. It is not disputed that they did all of the work in connection with the previous reports, including such coding as was done.

We conclude that past practice brings this special work within the scope of the Agreement. The Carrier obviously made or concurred in that practice.

The question before us is whether the Carrier had a right, under the circumstances of past performance on such projects, to remove this coding work from under the Agreement and direct its accomplishment by Traveling Auditors even if the project was more comprehensive and more complicated than the others. We think not, in the light of recorded past practice. The Carrier, of course, has the responsibility for doing its work and getting its work done as efficiently and economically as possible. There is no showing here, however, that an effort was made to determine whether the clerical forces could do the more complex coding or learn to do it proficiently and satisfactorily if given the same opportunity and instructions that were given to those who did this special coding. If that had been done and they had failed to meet the requirements, there can be little doubt of the Carrier's right to take such steps as were necessary to get the work done promptly and accurately.

Having brought this work under the Agreement by past practice numerous Awards sustain the Claimants' position, among them Awards 631, 751, 1209, 3191, 3360 and 3371. We also have examined Awards cited by the Carrier: 1802, 2013, 3003, 3584. None of these Awards deals with the situation here in which, by past practice without exception so far as the record shows, clerical forces did all of the similar work that the Carrier previously required.

The claim is for reimbursement to William R. Weddigan and 50 other employees for a total of 6,000 hours at overtime rate of pay. No details appear in the record. The Carrier states that "the actual time listed by the Traveling Auditors amounted to 2,792 hours." Claimant Clerks admit their estimate may be excessive. They worked no overtime.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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.

AWARD

Claim allowed, on pro rata basis, to extent of 2,792 hours, less time actually consumed, if included in the 2,792 hours, by Traveling Auditors in writing the instructions for the organization of the project and actual installation of the system of coding as distinguished from performing any of the coding work.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of November, 1949.