

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John M. Carmody, Referee

PARTIES TO DISPUTE:

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

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 Employees of the New York Central Railroad, Lines West, that the Carrier violated the Clerks' Agreement

1. When on September 10th, 1947, the Carrier removed completed trip sheets for the week of July 7th to 13th, inclusive, 1947, showing time allowed engineers and firemen in through freight, local freight and yard service, freight conductors, brakemen, hostlers, and hostlers' helpers, which sheets were worked and completed by employees covered by our agreement in the Auditor of Expenditure Accounts Office at Detroit, Michigan, turning over these records to Traveling Auditors, Traveling Payroll Inspectors and Examiners on September 11th, 12th, 13th, 15th, 16th, 17th, and 18th, 1947 for the purpose of preparing a study in connection with changes in rules and rates of pay filed by notice upon Carrier by representatives of Engine, Train and Yard Service Employees on June 20th, 1947, which study in all previous wage and rule change disputes had always been compiled by our Trainmen and Enginemen Timekeepers (employees covered by our agreement in the Auditor of Expenditure Accounts Office) on an overtime basis, and
2. That the Carrier now be required to reimburse W. D. Buck, N. B. Ball, Jane Hartman, Nell Kenefeck, E. C. Johnson, and other employees covered by our agreement on overtime bases for the number of hours consumed by these employees not covered by our agreement to complete the study.

EMPLOYEES' STATEMENT OF FACTS: In the past when the Carrier required wage studies in connection with wage disputes or rules changes covering trainmen and enginemen, the timekeeping forces were always required to compile such studies from the time slips handled by the Trainmen and Enginemen Timekeepers, showing the increased cost between the present and proposed rates or rules changes based on the various methods of payment paid trainmen and enginemen on through freight, local and yard service, hostlers, etc., which studies from the time slips were only made available in the Timekeeping Department and compiled on an overtime basis.

On September 11th, 1947, the Carrier required a similar time study in connection with their present wage and rules changes dispute with the enginemen, but instead of using the regular forces in this instant case to compile a similar study as had been compiled by the Trainmen and Enginemen Timekeepers in previous wage and rules changes disputes, the Carrier saw fit to borrow all the timekeeping records from the Timekeeping Department of the

OPINION OF BOARD: In June of 1947 a demand was made upon this Carrier by representatives of engine, train and yard service employes for changes in rules. In order to determine how much it would cost if proposals were granted Carrier applied the proposed changes to existing time and payroll records and translated the result into a report. The request for this report came to the operating and accounting officials on September 5, 1947 with instructions that it must be in Chicago on or before September 25, 1947. It reached Chicago September 23, 1947.

The basic records from which the report was derived were the daily time records for employes in the services covered by the proposals for rules changes. These daily records are compiled and maintained regularly for payroll purposes by trainmen and enginemen timekeepers in the Audit of Expenditures Office.

The claim here, in essence, is that these time records belonged to the timekeepers who made the daily entries and that any data which the Carrier required for such special purpose as here involved should have been drawn off by them on an overtime basis.

It is not disputed that the work involved here is not a part of the routine or regularly assigned work of these timekeepers. It is not even regularly intermittent like an annual inventory or annual report of operations; two or three or even more years may intervene between such reports.

No positions were abolished; no new positions were created. No seniority was disturbed. No timekeeper was deprived of his regular assignment or disturbed in his regular duties. They were not called upon, however, to prepare the report upon an overtime basis. The Carrier explains this by saying that the report could not have been delivered on time if confined to overtime by these timekeepers who had their regular duties to perform and that the data were confidential. However valid these reasons may be they are material here only if compilation of this report belonged exclusively to the claimant timekeepers.

The Organization submits an affidavit from five timekeepers who affirm that "within their knowledge" when previous wage studies were made the records were not removed from their office nor was the work done by other forces.

The Carrier submits unsworn statements from seven officials in the Accounting, Auditing and Personnel Departments, whose service records range from sixteen (16) years to forty-five (45) years, who maintain, in general, that sometimes these studies have been made entirely by schedule employes, sometimes entirely by non-agreement employes and sometimes by both or by employes brought in from the outside. These statements are to a degree self-serving as claimed for the Organization but it can hardly be said they contain no truth. Only one specific instance is cited, with date, by these officials; none by the timekeepers. The Assistant Auditor of the Expenditures says, "... in 1941 I worked with Personnel Department forces entirely and basic records were shipped to Chicago and after we had completed the study, the records were then returned to the Accounting Department offices."

The timekeepers who made the affidavit spoke "within their knowledge." We do not question their integrity when we conclude, from the record, that there undoubtedly have been other instances than the one cited over a span of years in which studies, similar to the one under review here, were made by others outside the personal knowledge of these men.

The right to make the basic timekeeping records clearly belongs to timekeepers under their agreement and their assignment. So also does any regularly assigned work, bulletined and held by right of seniority, that may develop from subsequent operations growing out of the use of these records. That they could have been made the report in question here more efficiently than others, as they claim, because of their familiarity with agreements, is not a matter that we are required to pass judgment upon. The records, however, belong to the Carrier. They are made for its use in the conduct of its business. In the absence of a clear showing that this special work belongs exclusively to the Claimants, to be done by overtime as they claim, we conclude the Carrier did not violate the Agreement when it assembled this report as it did. See Award No. 4585. We distinguish the instant case from Award No. 4642. There the record clearly shows that claimant clerks had done all of the work in connection with previous similar duties.

Numerous awards have been submitted by both parties. The Organization cites Awards Nos. 1646, 2282, 2469, 3417, 3587, 4499, 4500 and 4532. For the Carrier we are confronted with Awards Nos. 615, 906, 1078, 1418, 1781, 1802, 2013, 2125, 2138, 3003, 3584, 3867, 4027 and 4117. We have examined all of these awards carefully. They possess varying degrees of applicability to the facts here. They are in conflict. Few of them fit the situation precisely except for certain principles related to the general application of the Scope rule. For example, if the work here were regularly assigned work, as was the case in Award No. 3587, which it was not, the applicability of that award here would be clear.

Award 1802 is persuasive although there the problem was one of the employment of outsiders to make an audit. There the Board found for the Carrier. Awards Nos. 2013, 2138, 3003, 3867 and 4027 have elements of similarity touching upon special work as distinguished from regularly assigned work that we find to be applicable here.

In Award No. 2013 we said, "To say that the six clerks . . . had an absolute right to do this work (inventory) on an overtime basis is entirely unjustified. . . . It cannot be said that the employees have the right to insist upon work being deferred or established systems of Accounting upset in order that they may have the privilege of working overtime and getting overtime pay."

In Award 3003 we said ". . . 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. . . . On the other hand, the contention that the Scope Rule provides that clerical employees . . . shall perform all clerical work has no foundation."

In Award 1078, telegrapher's case, we said "Reasonable flexibility in the administration of the railroad industry, except in so far as it is inhibited by law or restricted, expressly or by necessary implication, through agreement of the parties, is essential to the welfare of the employees as well as to that of the carriers."

Claimants have not demonstrated their exclusive right to make the special report in question here.

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 not violated.

AWARD

Claims 1 and 2 denied.

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.