

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 on the New York Central Railroad, Lines West, that the Carrier violated the Clerks' General Agreement and the Special Agreement signed at Detroit, Michigan, March 19th, 1948

1. When on May 6th, 1948, the employees in the Division Group of Section 5 were required to set aside their regular assignments, and

2. When on May 22nd, 1948, the employees in the Division Group of Sections 1 to 4, inclusive, were required to set aside their regular daily assignments, all of which groups, 1 to 5 inclusive, were required to take care of work which had been deferred by the Carrier prior to April 1st, 1948, and

3. That the Carrier be required to pay each employee affected an additional day's pay in addition to their regular monthly rate for each day required of them to set aside their regular duties during their regular eight (8) hour assignments with the effective date of April 1st, 1948.

EMPLOYEES' STATEMENT OF FACTS: Prior to April 1st, 1948, conference was requested by the Assistant Comptroller, Mr. G. H. Albach, with the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees for the purpose of discussing and agreeing to changes in the assignments and methods of operation, which involved the handling of interline accounts from a monthly basis to that of daily basis.

By agreement reached on March 19th, 1948, the changes became effective as of April 1st, 1948 to the extent that all positions that were affected by the changes in the accounting method would be abolished and new positions created to take care of the changed assignments resulting from the realignment of work and the change effected from the monthly interline accounts to that of daily interline accounts.

This agreement signed March 19th, 1948, as per SPECIAL AGREEMENT attached to Exhibits No. 1 and No. 2, indicates the provisions for accomplishing the required changes and other provisions with respect to the working conditions and rates of pay. One of the sections, Section No. 6, provides that except as provided for in Section No. 5 (which provides for employees helping each other in their respective sections providing their own assignments have been completed) no employee will be required to set aside his regular assignment during his regular eight (8) hours to assist other employees or to bring up to date work falling behind.

When the new change of operation came into effect on April 1st, requiring the employees to handle their interline accounts on a daily basis instead of a

respectively the letters from the Auditor Passenger Accounts to the Local Chairman dated May 24, May 28 and June 8, 1948 regarding this matter.

During the negotiations in March 1948 the representatives of the Employees accepted this program as being reasonable and fair. Section 6 was not intended to apply solely to current work after April 1, 1948, and this section does not refer to work which was in arrears on that date nor to work in connection with monthly reports for February and March, which had not been completed and could not have been completed before April 1st, the effective date of the new method of accounting. It is therefore obvious that Section 6 is not applicable to this case.

3. AWARDS OF THIRD DIVISION, N.R.A.B., SUPPORT CARRIER'S POSITION.

In its Award 2013 the Third Division held:

"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. These men *** worked their regular hours and received their regular pay. That is all the agreement guarantees."

Exhibits not reproduced.

OPINION OF BOARD: Prior to April 1, 1948 Ticket Agents made their reports to the office of the Auditor of Passenger Accounts on interline sales at the end of each calendar month. On April 1, 1948, a new plan was substituted by which Agents at large stations submitted their reports on interline ticket sales on a daily basis and those at other stations on a weekly basis. In preparation for this change in procedure the Carrier sought from the Organization and secured a Special Agreement effective April 1, 1948. This Agreement, consisting of a preamble and ten numbered provisions, is in evidence. We quote here three of these provisions that are especially pertinent:

"1. That all positions affected by the new positions as enumerated in the attached Exhibit 1-2 shall first be abolished and new positions with their agreed upon assignments as indicated in Exhibit 1-2 bulletined in place of the corresponding number of positions abolished."

"5. That employees within each section will help each other in their own section only, providing their own assignment which is in the office is completed.

"6. Except as provided for in Section 5 of this agreement, no employee will be required to set aside his regular assignment during his regular 8 hours to assist other employees or to bring up to date work falling behind."

The terms of this Agreement are clear; we perceive no ambiguity. It is equally clear, however, that it made no specific provision for taking care of the February and March backlog. Some February reports were in process, the March reports, coming in on the old monthly basis, were not due until after April 1, 1948. The old positions, suitable to the old procedures, had been abolished; new positions to accord with the new methods had been established. A re-grouping of employees had been effected. The current work presumably would require full time of the clerks.

The parties were aware of the hiatus. They discussed it. Although they did not incorporate it into the Special Agreement or reduce it to writing, it appears from the record that both parties understood the February and March reports would be processed by utilizing overtime and such time as clerks might have free from their regular assignments.

That plan did not accomplish the desired result. Much of the backlog from February and March carried over into May and June. During parts of May and June the Carrier set aside current work, which the Special Agreement was made to cover, and required the clerks to process the backlog—the February and March reports. This fact is not in dispute.

The Organization maintains this constituted a violation of the Special Agreement. Obviously it did. Current work was not abandoned, however. It was temporarily suspended and done later. In justification of its action, Carrier argues that this involved no change in work; that the nature of the work was the same. It was, but neither the Special Agreement nor the oral understanding so far as we can glean from the record, provided for setting aside current work for any purpose. On the contrary, we find these words in Section 6 of that Agreement: "... no employee will be required to set aside his regular assignment during his regular 8 hours to assist other employees or to bring up to date work falling behind." (Emphasis supplied.) The only exception is provided for in Section 5 supra.

In further justification, Carrier maintains that the clerks would not work all of the overtime that was offered. To this the Organization replies that the opportunities offered were restricted to three hours on each of three days per week, Monday, Wednesday and Friday. There is no evidence in the record that they were ordered to work these hours and days nor how many or which clerks would have worked other hours had the opportunity been available. The fact is the reports, essential to the Carrier's business, were not getting done. Some overtime was worked; apparently not enough to keep abreast of current work and absorb the backlog. The Carrier acted. By removing the clerks from their regular assignments, it got the backlog work done.

We conclude it acted in contravention of the terms of the Special Agreement.

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 Special Agreement was violated.

AWARD

Claims 1, 2 and 3 sustained.

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.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Interpretation No. 1 to Award No. 4644

Docket CL-4757

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

NAME OF CARRIER: The New York Central Railroad Company.

Upon application of the representatives of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

In the Opinion of the Board in connection with this Award we confined our discussion largely to the application of the Special Agreement because that Agreement was made "as a result of realignment of work" to make the "agreed upon changes effective."

The Award was not intended to limit the application of the terms of that Special Agreement to work arising out of the processing of February and March accounts as the Carrier now appears to suggest. To do that would be to write something into the Agreement that was not put there by the parties. It is not within the province of this Board to write or rewrite agreements.

The Award was intended to cover any violation within the claim, as provided for in Section 6, whether it arose out of the processing of February and March accounts or out of some other necessity "to bring up to date work falling behind."

As to whether the Carrier has made full settlement under the Award, as it now claims it has done by payment of \$12,157.77 for work on February and March accounts for the period May 6, 1948 to June 18, 1948, when work on those accounts was completed, we can only repeat that it was not our intention in the Award to limit the application of the terms of the Special Agreement to February and March accounts.

Referee John M. Carmody, who sat with the Division as a member when Award No. 4644 was adopted, also participated with the Division in making this interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

**ATTEST: A. I. Tummon
Acting Secretary**

Dated at Chicago Illinois, this 29th day of September, 1950.