

**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 PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the provisions of the Rules Agreement, effective May 1, 1942, particularly Rule 4-C-1, on certain dates, Office of Expenditures, Altoona Works, Altoona, Pennsylvania.

(b) The named Claimants be paid at the rate of time and one-half for dates and hours shown herein and subsequent dates in addition to pay allowed until violation is corrected. (Docket A-60)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimants in this case held positions and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employees 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, and also with the National Railroad Adjustment Board. This Rules Agreement will be referred to herein from time to time without quoting in full.

The Claimants in this case are employees holding regular positions covered by the Scope of that Rules Agreement having seniority in Group 1 in the Seniority District in which the Expense Bureau is located at Altoona Works.

Employees (Claimants) assigned to that Bureau are assigned to positions of Timekeepers (Clerks), the duties of which include the posting and calculating the time and earnings of the several classes of employees engaged at Altoona Works.

For several years prior to December, 1947, employees were not divorced from their regularly assigned duties during their regular tours of duty to help out on work incident to closing of the payrolls semi-monthly, but rather

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, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3 (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 Agreements 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 thereto 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 such action.

CONCLUSION

The Carrier has shown that, under the applicable Agreement between the parties to this dispute, the Claimants were not required to suspend work during their regular hours to absorb overtime and that no violation of the basic intent of Rule 4-C-1 or even the application placed upon that rule by the Employees has occurred.

It is, therefore, respectfully submitted that the claim is not supported by the applicable Agreement and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants hold clerical positions in the Office of the Supervisor of Expenditures, Altoona Works, Altoona, Pennsylvania. They are assigned to six-day positions, the primary duties of which consist of bookkeeping. There is in the same office another group of clerical employees assigned to six-day positions whose primary duties are the calculation of piecework charts for payroll purposes. The record shows that for thirty years it has been the practice to use employees in the bookkeeping group to assist in calculating piecework charts during payroll periods, both during regular and overtime hours as the occasion demanded. In the latter part of 1947, the work of calculating piecework charts diminished to such an extent that it has been performed without the necessity of overtime work. It is the contention of claimants that their use during payroll periods in assisting in the calculation of piecework charts is a violation of Rule 4-C-1, current Agreement, which provides:

"Employees will not be required to suspend work during regular hours to absorb overtime."

The assignments of employees in the bookkeeping group does not specify the doing of payroll work. It necessarily includes miscellaneous and incidental work that is naturally appurtenant to the primary duty of bookkeeping. The calculating of piecework charts for payroll purposes is work which is assigned to the payroll group. The claim here made is that the employees in the bookkeeping group are required to discontinue their regularly assigned duties during regular working hours and to perform duties assigned to the payroll positions during the peak of payroll periods. It is claimed that this use of bookkeeping employees is done to avoid the payment of overtime to the occupants of the payroll positions.

We think the past awards of this Board clearly sustain the position of the claimants. Awards 3416, 3417, 4352, 4690, 4710. It must be borne in mind that the work of calculating piecework charts for payroll purposes belongs to the employees to which it is assigned. If bookkeeping clerks can properly

assist in performing the work during peak periods as in the present case, they can perform it in non-peak periods, or, carrying it to the extreme, they could perform all of the work of the payroll clerks. The Agreement protects the rights of the payroll clerks which they have obtained by the seniority and bulletining rules. The contention of the Carrier that a thirty-year practice exists is supported by the record. But this operates only to defeat reparations for past violations. It does not change the Collective Agreement or deprive the Organization of the right to insist upon compliance with the rules from the time the violation is called to the attention of the Carrier.

It is urged that claimants were at all times occupying their assigned positions, even when assisting in the calculating of piecework charts. In one sense of the word this is true, but within the meaning of the rule relating to suspension of work to absorb overtime, the time used in calculating piecework charts constitutes a discontinuance of the regularly assigned duties of the bookkeeping clerks for that period of time.

The claim is sustained at the pro rata rate in accordance with Awards 4244, 4196, 3587.

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

The Agreement was violated as charged.

AWARD

Claim sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of November, 1950.

DISSENT TO AWARD 5125, DOCKET CL-5074

The invalidity of this award is exhibited by its Opinion of Board which declared the record to support the fact that clerks of the claimant group's class had performed the work here protested both during regular and overtime hours as a thirty-year practice, but then held that because in the period beginning December 1947 the Carrier, being able to arrange its work so that overtime was not required, by so doing put itself in violation of a current and pre-existing Rule 4-C-1 relating to suspension of work to absorb overtime.

No more erroneous interpretation of the intent of that rule or of the agreement in its entirety in application to the circumstance here involved can be imagined. The award represents complete error.

/s/ C. C. Cook
/s/ A. H. Jones
/s/ C. P. Dugan
/s/ J. E. Kemp
/s/ R. H. Allison