

Award No. 5233
Docket No. CL-5306

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, 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:

Clerk J. F. Kane, Passenger Traffic Department, Eastern Region, Philadelphia, Pennsylvania, be returned to service and compensated for all wage loss sustained, dating from April 1, 1949, until adjusted. (Docket T-6.)

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 Claimant in this case held a position 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 considered 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, John F. Kane, holds a seniority date on the Seniority Roster of the Passenger Traffic Department, Eastern Region, of February 1, 1907.

Under date of February 7, 1949, Claimant Kane was notified, in a joint notice, addressed to Claimant Kane, et al., that effective as of February 1, 1949, his position of Assistant Chief of Tariff Bureau would be abolished, and he would assume the duties of clerk on the mail desk distributing tariffs and circulars, effective February 1, 1949 (at a salary of \$277.72 per month).

In this same notice Clerk Hain was notified that he would assume the duties formerly assigned to Claimant Kane.

Under date of March 12, 1949, Claimant Kane was notified verbally that his position of Clerk, Tariff Bureau, General Offices, Philadelphia, would be abolished effective with the close of business March 31, 1949, and was further verbally notified that after the close of business March 31, 1949, there would be no further work for him in the Seniority District in which

is defined in this Agreement, on his behalf, to the Superintendent (in Regional and System General Office Departments and at Altoona Works, the officer in charge of the Department).

In the case of claims for compensation alleged to be due, the time periods specified in Rule 7-B-1 will be observed."

Paragraph III-1-D (1) of Supplemental Agreement "A" contains the same exception to Rule 7-A-2 as is cited above with respect to Rule 7-B-1. In other words, an employe holding an appointive position who wishes to present an alleged injustice under Rule 7-A-2 must do so himself. The Claimant's claim in this case apparently is made on the theory that he always was and should have been occupying an appointive position in the Tariff Bureau, and in that situation, as pointed out above, there is no bona fide claim properly before your Honorable Board.

Furthermore, the Claimant in this case applied for and has been granted an annuity by the Railroad Retirement Board, the effective date of the annuity being December 20, 1949. In a joint communication to the Chief of Tariff Bureau, dated December 20, 1949, the Claimant and another employe stated, "In accordance with the provisions of the Railway Retirement Act, beginning December 20, 1949, we hereby relinquish claim to former positions with the Pennsylvania Railroad". Claimant by his voluntary action has retired from the service of this Carrier. Carrier submits that Claimant by his voluntary act has deprived this Honorable Board of any basis for issuing an affirmative Award that Claimant be "returned to service and compensated for all wage loss sustained, dated from April 1, 1949, until adjusted".

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 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 Employes 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 Claimant is not entitled to be returned to service nor to the compensation which he claims.

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: The rules involved in this docket are identical with those in Award 5232. The pertinent facts of record are so similar that the same disposition of this claim must be made as of the one there involved.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of February, 1951.