

Award No. 5773  
Docket No. CL-5663

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Angus Munro, Referee

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**PARTIES TO DISPUTE:**

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

**THE CENTRAL RAILROAD COMPANY OF NEW JERSEY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerks' Agreement when

(a) it removed work from the scope and application of the Clerks' Agreement, through premeditated and unilateral action, resulting in the abolishment of four (4) positions at the close of business June 7, 1950 and one position at the close of business June 15, 1950, and

(b) that the Carrier be required to compensate all affected employees for monetary losses sustained as a result of the action of the Carrier.

**EMPLOYES' STATEMENT OF FACTS:** During the latter part of March, or the early part of April, 1950, all the restaurant Employees were notified, verbally, that the Union News Company had agreed to terms of lease and would take over the facilities about June 1, 1950.

On May 12, 1950, over the signature of Mr. P. M. Parker, application for transfer of the liquor license to the Union News Company was made to the Liquor Control Board, stating that the premises had been leased to the Union News Company.

On May 24, 1950 bulletin (Exhibit "A") was posted, over the signature of Mr. P. M. Parker, Property Manager, notifying four (4) Employees under the scope of the Clerk's Agreement, that their positions were abolished account discontinuance of operation effective with tour of duty ending midnight June 7, 1950.

On May 31, 1950 the Carrier was notified, in writing, by the General Chairman that the proposed action violated the rules of the Clerks' Agreement (Exhibit "C").

On June 8, 1950 bulletin (Exhibit "B") was issued, over the signature of Mr. P. M. Kelly, Comptroller, notifying the Employees in the Auditor Passenger Traffic's office, that position "AA-6" was abolished account work

The Carrier affirmatively states all data contained herein has been presented to the employe representative.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This claim is advanced by the System Committee of the Brotherhood, hereinafter called Petitioner, for and on behalf of the holders of certain jobs more particularly described in part (a) of claim herein, hereinafter called Claimants.

Petitioner avers on or about June 1st, 1950, Carrier operated at the location in question a restaurant the work of which was manned by Claimants. That Carrier on or about the above mentioned date abolished the positions manned by said Claimants, and executed a lease to a third party whereby said third party took over and operated a restaurant with employes of its own choosing. That the above mentioned and described act on the part of Carrier is repugnant to the Schedule between the parties and in particular to Rule 1 thereof.

We note Petitioner does not seek restoration of the jobs or work in question. Nor is the validity of the lease executed by Carrier attacked. It appears to us from the facts of record this is not a farm out case. In event the lessee of the premises had operated a shoe store as mentioned in the record it would seem Claimants would have no good reason to complain but that is not our case. Our problem does not concern itself with what use the lessee might make of the premises but rather what use was made of the same. Furthermore the undisputed fact the lessee could use and enjoy the premises without restriction on the part of Carrier does not alter or change the problem.

It is elementary one may not do by indirection that which he is prohibited from doing directly. We thus come to the problem hereinabove stated. Was the work in question that type of an operation that may be classified as coming within the operation of Carrier's business? If so Schedule Rule 1 does not permit Carrier to evade its Schedule obligations even though the same constitute an economic burden or handicap. We think the function of providing an opportunity for the patrons of Carrier to refresh themselves through the means of food and drink is a material and essential part of the principal function, namely transportation, and as such is to be protected by the employes identified in the Schedule.

That portion of part (b) of claim herein reading "all affected employes" shall not be construed as including employes other than the holders of the positions referred to in part (a) of claim at the time of the act involved herein on the part of Carrier.

Inasmuch as the monetary losses sustained by the employes referred to in the next preceding paragraph may be determined and fixed with certainty any damage resulting from the acts of Carrier as aforesaid shall be limited to the sum or amount so fixed and determined.

**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 Employes involved in this dispute are respectively Carrier and Employes 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 holders of the positions referred to in part (a) of claim herein be and they are hereby compensated for all monetary loss sustained by virtue of Carrier's act in the premises less all lawful deductions.

## AWARD

The claim herein be sustained to the extent indicated in the above and foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 21st day of May, 1952.

**DISSENT TO AWARD 5773, DOCKET CL-5663**

The Third Division, National Railroad Adjustment Board, does not have jurisdiction to decide disputes covering restaurant employes; Award No. 1697.

In reaching its conclusion, the majority, without justification, state:

“\* \* \* We think the function of providing an opportunity for the patrons of Carrier to refresh themselves through the means of food and drink is a material and essential part of the principal function, namely transportation, and as such is to be protected by the employes identified in the Schedule.”

The Petitioner did not claim and admitted it was not seeking “restoration of the jobs or work in question,” and for that reason the limited sustaining award is in error.

For these reasons we dissent.

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ J. E. Kemp

/s/ W. H. Castle

/s/ A. H. Jones

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

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**INTERPRETATION NO. 1 TO AWARD NO. 5773  
DOCKET NO. CL-5663**

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

**NAME OF CARRIER:** The Central Railroad Company of New Jersey.

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

By joint letter the parties submitted to the Board the following "we have been unable to determine from the language in the opinion and findings of the decision, what actual monetary claim is sustained, and duration thereof," with reference to the above numbered award.

In that certain instrument styled Employees' Rebuttal Brief, and filed herein, Petitioner very plainly sets out 'do request compensation for monetary losses sustained by the Employees as a direct result of the unilateral and premeditated actions of the Carrier which did violence to the rules of the Clerks' Agreement.'

Inasmuch as Petitioner did not choose to allege in particular what monetary losses, if any, were sustained as a direct result of the act complained of on the part of Carrier, the Board was unable to fix and determine the same in terms of dollars and cents. However, the Board agreed with Petitioner the employees were entitled to monetary losses sustained as a direct result of Carrier's act. The Board meant and intended exactly what it said when it held such damages may be determined and fixed with certainty. Now, by reason of the above and foregoing, let the parties hereto use the information they alone have knowledge of and proceed to execute this Award. The damages being limited as aforesaid, the Petitioner will not be permitted to expand or enlarge said damages.

Referee Angus Munro who sat with the Division, as a member, when Award No. 5773 was adopted, also participated with the Division in making this interpretation.

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

**ATTEST: (Sgd.) A. Ivan Tummon  
Secretary**

Dated at Chicago, Illinois, this 18th day of November, 1952.