

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Rules of the Clerks' Agreement at New Castle, Pa., when on Saturday, July 8, 1950, and subsequent Saturdays; and Sunday August 27, 1950, and subsequent Sundays; it used Mr. Lee Corey, a student at Westminster College, to work position of Yard Clerk one day per week, and,

That Carrier shall compensate Mr. S. A. Bender, a qualified employee, for eight (8) hours July 8, 1950, and all subsequent Saturdays; and Sunday August 27, 1950 and all subsequent Sundays at time and one half rate (File 964).

EMPLOYERS' STATEMENT OF FACTS: Prior to September 1, 1949, position of Yard General Clerk, New Castle, Pa., worked Monday through Saturday with Sunday as the regularly assigned rest day. Effective September 1, 1949, position of Yard General Clerk, New Castle, Pa., was assigned to work six days per week, Monday through Saturday, and Mr. S. A. Bender was assigned to work Monday to Friday, inclusive, Saturday being included in a regular relief assignment. For reasons unknown, the regular assigned employee who bid in the relief assignment was not permitted to work the position at New Castle on Saturdays and in July, 1950, the Carrier hired Mr. Lee Corey, a student at Westminster College at New Wilmington, Pa., to work the position one day a week, Saturday. Mr. Corey was unable to work any other day of the week except Saturday and Sunday because of the necessity of attending classes Monday to Friday inclusive. Mr. Corey worked July 8, 1950, and subsequent Saturdays. The Saturday work was included in relief position Bulletin No. 4619 dated September 28th, 1950, Employees' Exhibit "A".

On Sunday, August 27, 1950, and subsequent Sundays, Mr. Corey was used in addition to the Saturday service and worked two days per week. At the time claim was appealed to the highest officer designated for handling employee matters the position was assigned to work seven (7) days per week, but only one relief day was included in a relief schedule and that one relief day, Saturday, was not worked by the regularly assigned relief employee, but by Mr. Corey, student.

POSITION OF EMPLOYEES: This grievance primarily involves the application of Rule 1, Scope, Rule 3, Seniority datum, Rule 20, Day's Work,

Therefore, the Carrier submits that the claim is without merit and should be denied.

All of the information herein has been discussed with or is known to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The essence of this claim is a contention that Elton Lee Corey was not a bona fide employe as he was not subject to the continuing authority of the Carrier because he was a student at Westminster College.

The facts are that he had attended Youngstown College from September 1949 to June 1950, he filed an application for employment stating that he was unemployed and was hired on July 3, 1950; he worked July 3 and 5 as receiving and delivery clerk, he worked July 8 and subsequent Saturdays as Yard-General Clerk, that being a rest day on that position; he also worked such position on Sunday, a rest day, starting at least on November 15; he enrolled as a student in Westminster College in September 1950 and continued as such through the school year of 1950-1951, summer school July 19 to August 29, 1951 and the school year of 1951-1952; after working on 30 days he was given a seniority date of November 10, 1950; on May 28, 1951 he was awarded a full time Yard Clerk position at West End Brier Hill; on July 13, 1951 he was displaced and exercised seniority on East End Yard Clerk position; and he resigned from the service on October 1, 1951.

Certainly at the time he was employed he was not a student at Westminster College as alleged, and we do not think that the fact that he subsequently went to college while employed by the Carrier can affect the bona fides of his employment. There is no evidence that he ever declined work opportunities or calls due to such activity.

There is no similarity between the facts of this case and the factual situations involved in our Awards 3763, 4495, 5078, 5501, 5620 and 6004. Here the employe worked until he acquired seniority and exercised it to obtain a regular position as well as being fully eligible for employment when he was employed.

Our Award 5558, relied on by the Employees, is not controlling here because in that case the rules provided that "seniority begins at the time employe's pay starts in the seniority district employed," whereas under the rules here involved employes must accumulate service of thirty days on Group 1 positions to establish seniority. Thus the rules in this case contemplate service prior to the establishment of seniority.

The service performed by Corey was such as could be performed by an extra or unassigned clerk, who would not otherwise have 40 hours of work that week, under the applicable rules. Hence this claim is without merit.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of February, 1953.