

Award No. 7385
Docket No. CL-7453

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

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

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 Marion, Ohio, when on April 16, 1953, the Carrier established a position of Janitor at the New Office Building in connection with the New Diesel Shop without benefit of bulletin and awarding, in accordance with the Clerks' Agreement and assigned same to an employee not covered by the Clerks' Agreement, and

(a) That the Carrier shall bulletin and award position to the senior applicant for position of Janitor at Marion Diesel Shop Offices Building in accordance with the Clerks' Agreement, and

(b) That the Carrier shall now reimburse Employee R. J. McKirm, senior Extra Roster "B" employee for any and all wage loss sustained retroactive to April 16, 1953, and for all subsequent dates and for any and all other employees adversely affected until such time violation complained of is corrected. (Claim 1032).

EMPLOYEES' STATEMENT OF FACTS: On or about April 16, 1953, the Carrier completed a new two-story office building at Marion, Ohio for clerical forces in the Mechanical and Stores Department and also for offices of supervisors and officers. The Carrier failed and refused to bulletin the position to employees coming within the scope of the Clerks' Agreement and hired a new employee who performed the janitor work in and around the new offices.

On or about April 17, 1953 it came to the attention of the Employees that the new office building attached to the diesel shop at Marion, Ohio would be ready for occupancy. Accordingly, on April 17, 1953, our Division Chairman addressed a letter to Master Mechanic at Marion, Ohio, Employees' Exhibit No. 1, calling his attention to the fact that the new office building would require janitory service and that janitor work came within the scope of the Clerks' Agreement, and asked for a conference with respect to this subject matter.

Under date of May 18, 1953, claim was filed with the Carrier, Employees' Exhibit No. 2.

The Organization has at no time produced any evidence to show that it has ever had or that it now has the right to perform the janitor work here in question. Factually, the opposite is true. All evidence is to the contrary.

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

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

(Exhibits not reproduced).

OPINION OF BOARD: The material facts in this claim are not in dispute. The question at issue is, in brief, was the position, when Carrier opened its new two story building in Marion, Ohio, of janitor, under the Clerks' Agreement. The Organization contends that the position does come under the provisions of the Agreement and the Carrier takes the position that the job is not one that comes under the Agreement. Hence the dispute. Petitioner relies primarily upon Rule 1—Employees Affected and also Article 2, Rules 3, 6 and 7.

Respondent Carrier contends that the work in question has been performed in the building previously used for a period of many years by employees not under the Clerks' Agreement and that the change in the building facility does not change this long established practice. In answer to this contention Petitioner states that Carrier is indefinite as to where the work involved belongs, that is, under agreement with any particular craft and hence under the showing made by it that the work is exclusively that of clerks in other like situations on this property. Illustrations of like work and the manner in which it is performed on Carrier's property are cited by both parties to this dispute in support of their respective positions in this controversy.

We are of the opinion that as a general proposition Petitioner has made a good showing with reference to work of the character being considered here. However, we do not think under the facts as shown by this record that the work can be considered exclusively that of clerks. And we do not think that a practice of long standing at the point in question was changed by the use of the new facility, that is, the use of the new building and therefore conclude that this claim fails.

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of July, 1956.