

Award No. 7482  
Docket No. CL-7339

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

H. Raymond Cluster, Referee

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**PARTIES TO DISPUTE:**

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

**READING COMPANY**

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

1. The Carrier violated the rules of the Clerical Agreement, when on July 1, 1952, employees of another carrier were instructed and permitted to perform duties and work within the purview and scope of the existing agreement between the Reading Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, without conference or negotiations.

2. The Carrier be required to assign such duties and work to employees within the scope of the Clerical Agreement by establishing, rating and bulletining the necessary positions in accordance with the rules of the Clerical Agreement.

3. That the successful applicants be compensated for an additional day's pay for each and every day subsequent to July 1, 1952 that the employees of another Carrier performed the duties and work as outlined in Claim No. 1.

**EMPLOYEES' STATEMENT OF FACTS:** Under date of October 21, 1952, the Division Chairman of the Clerks' Brotherhood wrote the Superintendent of the Philadelphia Division of the Carrier, Mr. A. R. Nice, Jr. as follows:

"October 21, 1952

Mr. A. R. Nice, Jr., Superintendent  
Philadelphia Division,  
Reading Company  
Reading Terminal  
Philadelphia 7, Pa.

Dear Sir:

On or about July 1st, 1952, non-employees, located at the United States Steel Plant, Morrisville, Pa., began performing

service incidental to maintaining car and demurrage records at the Transportation Building in accordance with the desires and requirements of the Steel Company. To segregate the clerical work at the Transportation Building and establish, rate and bulletin four additional clerical positions to perform work in connection with shipments over the Reading Lines would result in having eight clerical positions to perform the duties and work that has been and can be properly performed by four positions.

Part 3 of the claim is a request that "successful applicants" under part 2 be paid an additional day's pay for each and every day subsequent to July 1, 1952. This, in the Carrier's opinion, would be an unnecessary and unwarranted penalty payment which is directly opposed to Carrier's responsibility of operating efficiently and economically in the interest of its patrons.

For the reasons set forth hereinbefore, the Carrier requests the Board not to assume jurisdiction in this dispute and dismiss same. However, should the Board assume jurisdiction it is the Carrier's position that the Clerks' request for the establishment, rating and bulletining of additional clerical positions at the Transportation Building in the Fairless Works and pay successful applicants an additional day's pay for each and every day subsequent to July 1, 1952 is, under the facts and circumstances surrounding this case, unwarranted and without merit and Carrier respectfully requests that the claim be denied in its entirety.

This claim has been discussed in conference and handled by correspondence with representatives of the Clerks' Brotherhood.

(Exhibits not reproduced.)

**OPINION OF BOARD:** It is undisputed that since on or about July 1, 1952 employees of the Pennsylvania Railroad have been performing Reading Company clerical work, including the checking of tracks and the maintaining of demurrage records on Reading Company forms, in the transportation office of the Fairless Works of the U. S. Steel Company at Morrisville, Pennsylvania. The claim is that this work belongs to Reading employees under the agreement between the Reading Company and the Clerks Organization, that the Reading be required to establish positions covering this work and bulletin them to its employees, and that the successful applicants to these positions be given an additional day's pay for each day since July 1, 1952 that the employees of the Pennsylvania Railroad have performed the Reading work.

The work involved is unquestionably clerical work of the kind covered by the scope rule of the Clerks' Agreement and under ordinary circumstances belongs as a matter of right to employees covered by that agreement. It is the unusual set of circumstances under which the disputed work came into existence and is being performed which is the cause of the disagreement between the parties in this case. In 1951, the U. S. Steel Company began construction of its new Fairless Works adjacent to the Pennsylvania Railroad main line tracks. The Pennsylvania built an industrial spur one and one-half miles long from the east end of its Morrisville Yard, across its main line, to and connecting with the U. S. Steel trackage on its property. The steel company wished the service of the Reading Railroad in addition to that of the Pennsylvania Railroad, and in order to render such service the Reading built a new yard on its main line at Woodbourne and built a single track line some seven miles long from Woodbourne to the east end of the Pennsylvania's Morrisville Yard, connecting there with the Pennsylvania's new industrial spur. The Reading and the Pennsylvania entered into an agreement under which the two Carriers were to use the new industrial spur jointly.

Insofar as the disputed work is concerned, the Reading had far from a free hand in deciding who was to do it and where it was to be done. The steel company required that the work be done in its transportation office on its property, and also that it be accomplished by a minimum number of railroad employees—thus eliminating the possibility of having a full set of Pennsylvania clerks to do the Pennsylvania clerical work and a full set of Reading clerks to do the Reading clerical work. The steel company expressed

no preference as to which employes should do the work, but insisted that there be no more employes assigned than were necessary for its performance. We are convinced from the record that the Reading wished its work done by its own clerks and that it made a bona fide effort to achieve an arrangement whereby there would be both Reading and Pennsylvania clerks assigned to the steel company's transportation office on the basis of two Pennsylvania clerks to one Reading Clerk, which was the anticipated proportion of the service to be rendered by the two carriers to the Fairless Works. The Pennsylvania Railroad would not agree to such a plan and established its own clerical employes in the transportation office to do the work of both carriers. There is some disagreement as to whether or not the Reading Company actually agreed to this procedure with the Pennsylvania, but at any rate it did not prevent its establishment and continuance.

It is the position of Claimants, stated a number of times in the record, that the background and circumstances of the creation of the positions in the transportation office are not relevant to the issue—which is the coverage of the scope rule of the agreement between the Reading and the Clerks. We do not feel that the interests either of the Carrier or the Organization are furthered by such a position; the Agreement does not exist in a vacuum but is part and parcel of the Carrier's entire operational structure. The work involved belongs to the Reading clerks and it is in violation of their Agreement that it is being performed by Pennsylvania employes. But the violation was not of the Carrier's own choice and is not within its sole power to correct. It would be useless to order the Carrier to bulletin and assign employes to positions which it is unable to establish. Nor is there a basis in this particular set of circumstances to require the Carrier to compensate any of its employes. It is the duty of the Carrier to re-initiate serious negotiations with the Pennsylvania Railroad and/or the U. S. Steel Company leading to the assignment to its clerks of work which is rightfully theirs, and we so order. In this connection, it is also the duty of the Clerks Organization to use its good officers with its Pennsylvania Railroad brothers to help accomplish this end.

Carrier's motions to dismiss on the grounds that the claim before us varies from that on the property, and that there was lack of proper notice, are denied.

**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 Agreement was violated, in accordance with the Opinion.

#### AWARD

Paragraph (1) of Claim sustained. Paragraphs (2) and (3) denied, in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois this 5th day of December, 1956.