

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, 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 of the Brotherhood that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, *except as amended, particularly the Scope and Rule 4-A-1 (i)*, when clerical positions located in the South Street Yard District, Philadelphia, Pennsylvania, Philadelphia Terminal Division, were changed from seven day assignments to five day assignments with Saturday and Sunday rest days, and the clerical work required on Saturdays and Sundays was assigned to employees not covered by the Clerks' Rules Agreement.

(b) The Claimant, James J. Varanelli, should be allowed eight hours' pay a day, as a penalty, for Saturday and for Sunday, September 3 and 4, 1949, and for each subsequent Saturday and Sunday until the violation is corrected. (Docket E-889.)

EMPLOYEES' 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, except as amended, 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, James J. Varanelli, is the incumbent of a clerical position located in the South Street Yard District, Philadelphia, Pennsylvania, Philadelphia Terminal Division. Mr. Varanelli has a seniority date on the seniority roster of the Philadelphia Terminal Division in Group 1.

the Claimant is entitled to eight (8) hours pay for the Saturdays and Sundays involved as a "penalty". In the event that your Honorable Board should decide that the Clerks' Agreement has been violated in this case, which the Carrier emphatically denies, it is respectfully submitted that there is no expressed or implied provision of the applicable Agreement that would provide for the method of payment sought by this claim.

While at this point, the Carrier also desires to point out that at no point during the handling of this claim have the Employees presented any evidence as to the amount of time that would have been required, either by the individual items of work or collectively, to perform the work allegedly performed by Trainmen on Saturday and Sunday. The claim for eight (8) hours is based on pure conjecture by the Employees which has no support in fact.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement 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, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the 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 Agreement between the parties to it. To grant the claim in this case would require the Board to disregard the Agreement between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the Agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that there has been no violation of the applicable Agreement in the instant case and that the Claimant is not entitled to the compensation which he claims.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

All data contained herein have been presented to the employe involved or to his duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Until November 3, 1949, Claimant Varanelli was regularly assigned to a third trick Yard Clerk position at Carrier's South Street Yard in the Gray's Ferry District of Philadelphia. At said location there were three such positions, one on each trick. Before September 1, 1949, each was a six-day position, Monday-Saturday, with rest day Sunday. Effective said date, each was made a five-day position, Monday-Friday, with rest days Saturday and Sunday. Before said date the positions were not worked on Sundays, by relief or otherwise. After said date the positions were not worked on Saturdays or Sundays, by relief or otherwise.

It appears from the record that when the original claim was first considered on the property, the Division Chairman's sole or main factual support thereof consisted of an enumeration of duties performed by the Yard Clerks Mondays through Fridays. It appears further that (1) after the original denial of claim there was considerable delay (until 1953) in efforts by the Parties to obtain facts bearing on the dispute; (2) Carrier then, in 1954, made its own investigation and later reaffirmed its denial of claim; (3) the Organization did not make specific factual allegations until progressing the claim to this Board; and (4) the names of other Yard Clerk Claimants at South Street were and are not set forth.

It appears from the record, finally, that in general, over the years, the volume of business at South Street Yard has not been substantially less on Saturdays than on Mondays through Fridays.

The claim in behalf of Varanelli is for eight hours' pay a day, as a penalty for Saturday and Sunday, September 3 and 4, 1949, and for all subsequent Saturdays and Sundays "until the violation is corrected," because of alleged assignment by Carrier of clerical work on those days to employees not covered by the Clerks' Agreement.

In view of the facts of record stated above, the Board rules that the claim here to be considered is to be limited only to Saturdays and, as to Saturdays, only to the period covered by Varanelli's tenure as Yard Clerk at South Street Yard. In other words, the Board here deals only with Varanelli's claim and only with the period of September 3, 1949 to November 2, 1949.

The Board finds that as to this claim and period the factual record is confused and insubstantial. The Parties seem unable or unwilling to present sufficient evidence on the basis of which a proper determination could be made. If an effort were to be made here to decide the case on its merits, the decision would have to be based mainly on inference from two very general facts. Thus, it is established that (1) the Yard Clerk position at South Street once worked on Saturdays, and (2) the amount of business at said Yard on said days was, by and large, not much less on Saturdays than on Mondays-Fridays. But there is no persuasive information on whether Yard conditions and practices on Saturdays were such that clerical work was or was not needed as it was on Mondays-Fridays. In the absence of such information the Board does not deem it proper to infer from the two above-stated general facts that usual or near-usual clerical work existed and was performed on Saturdays.

It follows from all the above that there is an insufficient basis for sustaining or denying Varanelli's claim for the period September 3, 1949, to November 2, 1949. The Board accordingly remands the case to the Parties for the development of sufficient accurate factual material.

If records do not now exist for the period of Varanelli's own claim, this ruling, the Board is aware, amounts to a denial of said claim. This result may be regarded as unfortunate. There is nothing, of course, to prevent the Organization from properly progressing a new claim based on later, substantial information.

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 the case should be remanded to the Parties for development of adequate factual material in accordance with Opinion.

AWARD

Claim remanded 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 13th day of January, 1959.