

Award No. 8842
Docket No. CL-8502

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis B. Murphy, 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 and continues to violate the Union Shop Agreement of August 29, 1952 when it fails and refuses to notify Clayton Ploss, Janitor, Hornell, New York, that he was charged with non-compliance of the aforesaid Union Shop Agreement in compliance with notice dated December 5, 1955, addressed to and received by General Master Mechanic Earl Branning on December 6, 1955, all in accordance with the provisions of Section 5 of the Union Shop Agreement dated August 29, 1952, and

That the Carrier shall be ordered and required to comply with request outlined in the aforesaid notice dated December 5, 1955. (Claim 1118.)

EMPLOYES' STATEMENT OF FACTS: Sometime prior to December 5, 1955 the Carrier hired Mr. Clayton Ploss as a Janitor in the offices located on the second floor of the Diesel Shop, located at Hornell, New York. The duties of this position were to clean the offices, including washrooms, of the General Master Mechanic, Road Foreman of Engines, Master Mechanic, Electrical Inspector, Electrical Supervisors, Labor Inspector, System Air Brake Inspector, the office of the office force, and File Room. Mr. Ploss performs exclusively janitor work and performs no work in the shop subject to the Firemen and Oilers' Agreement. That Organization has disclaimed any right to coverage of this individual and his position. All of the work performed by Mr. Ploss comes within the Scope and coverage of the Clerks' Agreement. The Clerks' Agreement is the only agreement on the Carrier that spells out its coverage of Janitors.

Under date of August 29, 1955 the General Chairman sent a letter to Mr. Ploss, informing him he should comply with the Union Shop Agreement by joining the Clerks' Organization. Due to failure to comply, the Organization cited Mr. Ploss to the General Master Mechanic on December 5, 1955 in accordance with Section 5 of the Union Shop Agreement. Mr. Branning, General Master Mechanic, refused to notify the Janitor claiming the position not subject to the Clerks' Agreement, see Employees' Exhibit "A".

with a remote chance of survival. Such award would no doubt serve as prima facie evidence.

The Carrier has shown that the work in question has never been contracted to Petitioner. If Petitioner desires to now represent such work and the employes engaged therein at Carrier's several shop offices, it should abandon the course it is here following and take the open path to negotiation. Should negotiation fail, Petitioner's source of aid is the Mediation Board.

The Carrier submits that the claim has not only been improperly submitted to this Board but that it is completely without merit and should be denied.

All data contained herein are known to the Petitioner.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant contends that the Carrier violated and continues to violate the Union Shop Agreement of August 29, 1952 when it fails and refuses to notify Clayton Ploss, Janitor, Hornell, New York, that he was charged with non-compliance with notice dated December 5, 1955, addressed to and received by General Master Mechanic Earl Branning on December 6, 1955, all in accordance with the provisions of Section 5 of the Union Shop Agreement dated August 29, 1952 and that the Carrier shall be ordered and required to comply with request outlined in the aforesaid notice dated December 5, 1955.

The Carrier's position and reason for refusal to accept notice in connection with Clayton Ploss, Janitor, Hornell, New York, is that he is not now and never has been subject to the agreement held by the Clerks' Organization, nor has the work of Shop Janitor ever been included in that agreement.

Mr. Ploss states that at the time of his employment as Janitor in April 1942, he was advised that the work he was to perform was not subject to any working rules or agreements between the Carrier and the complainant and during his absence account of sickness or vacation a laborer from the shop has been used to fulfill his duties. It is apparent from the record that there are other janitors working at the Hornell Shops who have also been taken from the laborers' gang.

There is only one issue to be decided here and that is did the Carrier violate its Union Shop Agreement with its Clerks by refusing to serve a Section 5 notice on Janitor, Clayton Ploss, for his failure to become a member of the Clerks' Organization or is said position subject to the Clerks' working agreement.

In Section 1 of the Union Shop Agreement, effective September 15, 1952, we find the employes covered by this agreement defined in part as follows:

"* * * all employes of the carriers now or hereafter subject to the rules and working conditions agreements between the parties hereto, except as hereinafter provided, shall, as a condition of their continued employment subject to such agreements, become members of the organization party to this agreement representing their craft or class * * *." (Emphasis supplied.)

and the end of Section 1 clearly states that—

“* * * Nothing in this Agreement shall alter, enlarge or otherwise change the coverage of the present or future rules and working conditions agreements.”

The record shows that Mr. Clayton H. Ploss was employed by the Carrier as Janitor, on April 15, 1942, and is still so employed. His duties consist of cleaning General Master Mechanic's, Master Mechanic's offices, also the General Office and several other offices on the same floor. The record also shows that when Mr. Ploss is absent from work for any reason his duties are performed by a member of the laborers' gang. It is also a fact that the General Foreman's office, in the Diesel Shop, the Foreman's office, and all Foremen's offices in the Back Shop, are cleaned by laborers from the Diesel and Back Shop Organizations.

After considering the facts and all of the evidence presented in this case the Board does not feel that this position or employe comes under the Union Shop Agreement, as indicated by the Petitioner, because neither Mr. Ploss nor the work he is performing is subject to Rules and Working Conditions Agreement of the Clerks' Organization.

For these reasons the Board finds and rules that the Carrier is not required to comply with the Organization's request in serving notice upon Clayton Ploss, Janitor, Hornell, New York, that he was charged with non-compliance of the aforesaid Union Shop Agreement.

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 Employe involved in this dispute are respectively carrier and employe 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 based on the foregoing Opinion, the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of the THIRD DIVISION

ATTEST: A. Ivan Tunmon
Executive Secretary

Dated at Chicago, Illinois, this 11th day of June, 1959.