

Award No. 9222
Docket No. CL-8583

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roscoe G. Hornbeck, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when, in the office of Auditor of Freight Accounts (Machine Accounting Bureau), Atlanta, Georgia, it required or permitted Mr. I. E. McCloud, an employe claimed to be not covered by the Agreement, to perform work regularly assigned to employes fully covered by the Agreement and,

(b) Claimant Mr. E. E. Yancey, I.B.M. Machine Operator, shall be compensated at proper rate of time and one-half for the time, hereinafter shown, that Mr. McCloud performed work belonging to employes fully covered by the Agreement.

EMPLOYEES' STATEMENT OF FACTS: The office of Auditor of Freight Accounts consists of three seniority districts, the Clerical District, Station Accounting Bureau, and the Machine Accounting Bureau. Claimant Yancey has seniority and is employed in the Machine Accounting Bureau, his position being fully covered by the Agreement.

The organization of the office, insofar as it relates to the Machine Accounting Bureau, is as follows:

"Official"	—Auditor of Freight Accounts (Mr. Garner). Assistant Auditor of Freight Accounts (Mr. Keller).
"Excepted"	—Chief Clerk (Mr. McCloud).
"Fully Covered"	—Head Clerks (5). Machine Operators (164).

(Note: The Employes contend that Mr. Keller's position is within the clerical craft or class. Also, a dispute exists as to the proper classification of Mr. McCloud. Mr. McCloud was formerly called "Chief Clerk, Machine Ac-

OPINION OF BOARD: This Claim in simplest terms is that the Carrier permitted Mr. I. E. McCloud, an employe of the Carrier not covered by the agreement of the Clerks, to perform work regularly assigned to I.B.M. operators who were fully covered by the Agreement.

The Claim fails for want of the essentials of proof to sustain it, namely, facts which will enable this Board to decide the controlling issue. In the last analysis the issue is met by conclusions only of the parties.

We briefly refer to the state of the record.

The Claim is in two parts. The first for 27 hours of work claimed to have been done by Mr. McCloud beginning February 10, 1955, ending February 18, 1955. The second for 42½ hours of work claimed to have been done by Mr. McCloud beginning April 12, 1955, ending May 10, 1955, 17½ hours of which is for night work on May 9 and 10, 1955. It is asserted that the work done by Mr. McCloud was the routine operation of I.B.M. machines.

All of the I.B.M. operators, including Mr. Yancey, worked and were paid for the hours set up in the claim except some of the night work which Mr. Yancey could have done but elected not to perform. Just how this situation would affect the Claim cannot be determined because of the failure to develop the probative facts.

Except for such of the conclusions set up by the Organization in its statement of facts as are admitted, its proof is limited to signed statements of Mr. Yancey, the first, of date February 21, 1955, relating to the first part of the Claim, addressed to Mr. Chapman, wherein it is said, "This is the hours that Mr. McCloud operated the I.B.M. machines." Then follow the hours set up in the Claim with this addendum: "Put in a claim for the pay, I will sign for it." The second, relating to the second part of the Claim, dated May 20, 1955, addressed to V. R. Chapman, Chr., Protective Committee, Washington Lodge 943, Atlanta, Ga., and signed E. E. Yancey, Member of Protective Committee. This is but the conclusion of Mr. Yancey that Mr. McCloud has operated the I.B.M. machine during the times set out.

The Carrier answers, in substance, that Mr. McCloud, whom it asserts is an Assistant Auditor of Freight Accounts, in charge of machine accounting and statistics, only operated the machines in his supervisory relation and in connection with necessary instruction to I.B.M. machine operators who were not informed as to their operation; that the work was in furtherance of the installation of a new system of statements of controlled accounts and statistics. That, as to the part of the second claim referable to May, 1955, the work was in connection with new Government contracts. It also denies that Mr. McCloud devoted any appreciable time to the actual running of the I.B.M. machines.

At this juncture it was incumbent on the Organization to come forward with the proof of its claim because it had been denied in all of its material parts.

The Organization in its reply to the Carrier's submission does not specifically deny the claim that the work was done in connection with the installation of a new system but asserts that Mr. McCloud was making up reports used in rendering Carrier's accounts which work was not redone by anyone covered by the Agreement. Says that Mr. McCloud is not regularly assigned to a position of I.B.M. machine operator. Suggestion is made that Mr. McCloud

did not have the qualifications to instruct in the operations of the I.B.M. machine in the new system to be instituted and that it was the duty of the Head Clerk to do such instructional and supervisory work. On these latter claims it is not our province to determine qualifications of employees of the Company appointed to designated positions and assigned certain duties. It is our opinion that Mr. McCloud, because of his official position, had supervisory authority, was a superior of the Head Clerk and had the inherent right to do the work which it is claimed by the Carrier he performed.

Upon the respective claims of the parties it was the obligation of the Organization to go forward with proof that the work done by Mr. McCloud was routine work properly belonging to the I.B.M. operators covered by the Agreement and the hours that such work was so performed.

It is asserted, and not denied, that prior to April 12, 1955, there were 13 I.B.M. operators working for the Carrier, including Mr. Yancey. Although the physical arrangements under which these employees worked do not appear, it is to be assumed that most, and possibly all, of them were in position to afford some definite information of what transpired and just what operations Mr. McCloud performed during the period set up in the Claim. None of this information is forthcoming. Nor did Mr. McCloud give us the benefit of his knowledge.

It may be said that the Organization would have difficulty in securing statements from the I.B.M. operators other than Mr. Yancey. But this did not oblige it from its obligation to produce the proof that was available. Mr. Yancey, by affidavit or statement, could have given some facts within his own observation relating to occurrences involved in the Claim which supported his conclusions and which would enable this Board to determine if the work of Mr. McCloud on the I.B.M. machines was merely routine.

The Organization may not recover on the weakness of the Carrier's defense, which is weak in particulars, but must rely on the strength and probative effect of the facts which it brings to the record.

It is obvious that the truth or untruth of this Carrier was susceptible of proof on the property. The I.B.M. operators were available to establish this proof. It is unfortunate that it is not forthcoming.

It may be said that the Claim should be remanded to the property for further processing but, if this were done, it would be because the Claimant has failed to meet its obligation of proof to sustain its claim. That being so, it would not be proper to remand the Claim to the property of the Carrier.

The proof does not show that the Agreement was violated.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S.H.SCHULTY
Executive Secretary

Dated at Chicago, Illinois, this 4th day of February, 1960.