

Award No. 9520

Docket No. CL-9440

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, 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 Committee of the Brotherhood that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, when it required and permitted Passenger Trainmen F. S. Onimus and G. L. McPherson to perform crew dispatching and other clerical duties accruing to clerks at Bay Head Junction, New Jersey, on July 4, 1955, and on subsequent dates.

(b) The Claimant, Clerk Morris Fogel, should be allowed eight hours' pay a day, as a penalty, for July 4, 1955, and for all subsequent dates on which clerical work was performed by Onimus and McPherson, until the violation is corrected. (Docket 54)

EMPLOYES' 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 in this case, Clerk Morris Fogel, is the incumbent of a regular clerical position of Crew Dispatcher located in the Crew Dispatchers' Office, Penn Station, New York, N. Y. He has a seniority date on the seniority roster of the former New York Division in Group 1. The former New York Division is now known as the New York Region.

special duty work here involved, which the Carrier emphatically denies, and assuming further that a technical violation of the Agreement has occurred, in any event, the Claimant cannot show any loss to himself nor any justification for the claim for eight hours' pay for each date involved, as a penalty. Even assuming a violation of the Agreement occurred in this instance, the position of the Claimant was not prejudiced. This principle was aptly stated by this Board in Award 6417, Referee Ferguson, as follows:

"Under these circumstances we are of the opinion that there has been a technical violation of the rules resulting in no loss to the Claimant and he is therefore entitled to no penalty * * *."

The Carrier, therefore, submits that the Claimant is not able to show any loss arising out of the alleged violation, and for that reason alone, the claim should be denied.

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 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 of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. 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.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimant, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a proper record of all of the same.

(Exhibits not reproduced)

OPINION OF BOARD: While the Record is not clear as to actual work performed by the Special Duty Conductors which allegedly is Crew Dispatcher work, it does appear that some of their activities involved only passing on information that was furnished to them by the Crew Dispatchers in New York.

A passing on of information by the Special Duty Conductors to trainmen would not be a violation of the Clerks' Agreement. However, there is serious conflict in the Record as to whether some of their other activities actually involved the dispatching of crews, work that is normally performed by Crew Dispatchers. This Board has no way of resolving conflicts in the evidence and the claim accordingly must be dismissed.

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 claim should be dismissed.

AWARD

Claim dismissed.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

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