

Award No. 9680

Docket No. CL-9236

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 LAKE TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerks' Agreement at Lorain, Ohio when on January 20, 1956 to February 11, 1956, inclusive, the regularly-assigned Vacation Relief Clerk, titled General Clerk position #130, was required to suspend work on his regular assignment and work position of Revenue Clerk position #134. Mr. R. H. Dunlavey, regularly-assigned Revenue Clerk position #134 was required to suspend work on his position and work the vacation relief assignment of Position #130 assigned to work vacation vacancy on position #138 Revenue Clerk, and

That Carrier shall now compensate Mr. R. H. Dunlavey at the rate of the General Clerk #130 the Vacation Relief Clerk who should have worked position #138 Revenue Clerk, and

That Mr. Dunlavey shall be compensated in addition to any other compensation received his regular rate of pay for the period January 20, 1956 to February 11, 1956, inclusive, during which period he suspended work on his regular position Revenue Clerk #134. (Claim: I/T-30)

EMPLOYES' STATEMENT OF FACTS: At conference on May 19, 1953 it was tentatively agreed between the parties to establish at Lorain, Ohio in the Accounting Department a position of General Clerk whose principal duties would include vacation relief for employes in the Accounting Department. This was confirmed by letter dated June 26, 1953, Employes' Exhibit #1. Conference was held on this matter on July 17, 1953 at which time tentative agreement was reached subject to confirmation by the Assistant General Superintendent. On July 24, 1953, Employes' Exhibit #2, confirmation of conference was made by the Assistant General Superintendent. Objection was taken to certain language in that letter by the General Chairman on July 30, 1953, Employes' Exhibit #3. The agreement, with exceptions outlined in letter of July 30th was accepted, and the General Clerk's position #130 was advertised to all employes, Employes' Exhibit #4. As indicated in the exchanges, the primary duties of the position were vacation relief. As a result of the August 21, 1954 national agreement, additional vacations were added to the position.

Maintaining records of Demurrage, Revenues and Per Diem."

The Carrier has consistently held that these seven positions constitute a pool force. Under these circumstances, it is entirely immaterial which portion of the work performed by Revenue Clerks is assigned to any particular Revenue Clerk; and it follows that the use of the General Clerk as a Revenue Clerk during the absence of one of the Revenue Clerks on vacation was entirely consistent with the provisions of the National Vacation Agreement, and of the understanding as set forth in Mr. Vogenberger's letter of July 24, 1953 (Carrier's Exhibit "C") in connection with the creation of the position of General Clerk.

For the foregoing reasons, it is respectfully submitted that this claim must be denied.

It is hereby affirmed that all data submitted in support of the Carrier's position have been submitted in substance to the employees or their duly authorized representatives and made a part of the particular case in dispute.

(Exhibits not reproduced)

OPINION OF BOARD: In June-July of 1953 the Carrier and the Organization's General Chairman reached an understanding for the establishment of a General Clerk position in the Accounting Department at Lorain, Ohio, the duties of the position to include vacation relief for Accounting Department employees.

Effective December 5, 1955, the Carrier by Bulletin No. 25 established seven "Revenue Clerk" positions in its Lorain Accounting Department; all seven positions were established at the same time, the title or classification of each was the same, all had the same hours of assignment (even including the same meal period), all had the same rate of pay and the same rest days, and the preponderant duties of all seven positions was to be "Maintaining records of Demurrage, Revenues and Per Diem." The Carrier contends that it has consistently considered the seven positions to constitute a pool force under Bulletin No. 25 and that it is "immaterial which section of the books is assigned to any particular Revenue Clerk"; the Carrier considers that each of the seven Revenue Clerks is equally responsible for the work of maintaining demurrage, revenue and per diem records. Considering that by clear language the Bulletin does indicate that the seven positions are in all respects identical, the above contentions of the Carrier must be accepted over the Organization's contention, which is not supported in the Record by any concrete evidence whatsoever, that each Revenue Clerk has a specific or individual work assignment. Moreover, even assuming the Organization's contention to be correct, that would not necessarily mean that the duties of each of the seven positions have been frozen to the extent that there is no permissible interchangeability of demurrage, revenue and per diem record work among the seven positions—at least in the present record the Organization has fallen far short of providing adequate evidentiary support for any conclusion that in spite of the terms of Bulletin No. 25 there should be no interchangeability of Revenue Clerk work among the seven positions. In any event, the period involved in the present claim, January 20 to February 11, 1956, was so soon after the December 5, 1955, establishment of the seven positions that there could hardly be any sufficient "practice", either as to nature or duration, to produce a result contrary to that indicated by Bulletin No. 25.

The Organization contends that "There can be no question that Mr. Dunlavey (Claimant) left his assignment to work the assignment of Mr. Brove (the vacationing employe), and Mr. Mowry (the General Clerk) worked Mr. Dunlavey's assignment." The Carrier acknowledges that while Brove was on vacation Claimant was assigned to perform the portion of Revenue Clerk work which Mr. Brove had been performing immediately prior to his vacation, and that the General Clerk was assigned to perform that portion of Revenue Clerk work which Claimant had been performing immediately prior to Brove's vacation, but the Carrier expressly denies the Organization's conclusions that Claimant was required and permitted to suspend work on his position and that Claimant became the General Clerk during the period in question. Suffice it to say that under the Record which is before the Board there is no showing that Claimant actually left his assignment during the period in question; there is no showing of any change whatsoever in his working situation except that he was called upon to perform different work during the period in question than he had been performing immediately prior thereto—work which the Carrier, insofar as the Record indicates, would have had full right to assign to him prior to January 20; there is no showing of any loss or disadvantage whatsoever suffered by Claimant or any other employe and there is no indication that the Carrier's action was in any respect motivated by bad faith considerations.

There is no sufficient showing in the Record that the Carrier could not have rightfully assigned work which Brove had been doing immediately prior to January 20, 1955, to Claimant after that date, or that it could not have rightfully assigned work which Claimant had been doing immediately prior to January 20 to Brove after that date. In this general regard see Award 8198 (involving this same Carrier and location) and Award 7786. As noted hereinabove, under the Record in this case interchangeability of Revenue Clerk work among the seven positions cannot be deemed prohibited. It follows that, insofar as the present Record indicates, no work was improperly assigned to Claimant during Brove's vacation and the Carrier committed no violation in using the General Clerk full time to perform work which the Carrier would have had full right to assign to Revenue Clerk Brove had the latter not been taking his vacation. Finally, it should be emphasized that in no sense did the Carrier use the General Clerk to cover two positions—and certainly none of the seven Revenue Clerk positions was even temporarily eliminated.

In view of all the above considerations it can only be reasonably concluded that the present claim should be 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 for reasons stated in Opinion the claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of December, 1960.