

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph E. Fleming, 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 assigned clerical duties, accruing to Clerks under the Scope Rule, to Yard Masters and other employees not covered by the Clerks' Rules Agreement, Stiles Street Yard, Linden New Jersey, former New York Division.

(b) The Claimant, Clerk J. T. Kurzawski, should be allowed eight hours pay a day for April 1, 1953, and all subsequent dates until violation is corrected, as a penalty, and the Carrier should be required to assign all clerical work now being performed by Yard Masters and others not covered by the Clerical Agreement, to employees who are covered by the Agreement. (Docket N-373).

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.

Mr. J. T. Kurzawski, the Claimant in this case is the incumbent of position of Relief Ticket Clerk, position Symbol F-3568, Pennsylvania Passenger Station, Newark, New Jersey, former New York Division. He has a seniority date on the seniority roster of the Former New York Division in Group 1. He works various tours of duty and observes Tuesdays and Wednesdays as rest days.

It is agreed that there were two clerical positions in existence at Stiles Street Yard, Linden, New Jersey, during World War II, and that these positions

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 the 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 Employee 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 Employee 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: There were two clerical positions in existence at Stiles Street Yard during World War II and they were abolished July 19, 1945. The clerical work remaining to be performed was assigned to the two Yard Masters remaining at the location. In January of 1951 the Carrier established a third position of Yard Master on the 12 Midnight to 8:00 A.M. shift. The parties to this dispute agreed to a joint check and the joint report is a part of this record. The question in this case is whether or not the Yard Masters at Stiles Street Yard are being required to do more than four hours of clerical work on any one tour of duty. While it may be concluded from evidence presented that a certain situation exists a mere statement of claim is not sufficient.

Award 7350 (Coffey) "The Statement of Claim amounts to no more than the allegation that the contract has been or is being violated. It is not evidence. The charge as laid, must be supported by fact. On the theory that the one affirmatively charging a violation is the moving party, and therefore, should be in possession of the essential facts to support the charge before making it, this Division of the Board is committed to the so-called "burden of proof" doctrine." While any facts that may assist in arriving at a proper conclusion may be considered, the Organization has not made a showing here that the Yardmasters performed four hours or more work per day. The 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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1961.