Award No. 10109
Docket No. CL-9900

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Harvey Daly, 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 Rules 4-A-1 (i), 5-C-1 and Extra List Agreement No. 6, as well as a firmly established past practice, when it failed to call Clerk C. M. Stoker for extra clerical work in the 400 Yard, Hawthorne Yards, Indianapolis, Indiana, on August 12, 1955.

(b) The Claimant, C. M. Stoker, should be allowed eight hours' pay for August 12, 1955, because of the Carrier's failure to assign to him, extra clerical work to which he was entitled, and for which he was available. (Docket 94)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes 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 Employes 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, Mr. C. M. Stoker, is the incumbent of a regular clerical relief position at Hawthorne Yards, Indianapolis, Indiana, with the following tour of duty:

upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that Clerk Rancourt properly was used to perform the work here in dispute and that the Claimant is not entitled, under the Agreement, to the compensation which he claims.

It is respectfully submitted, therefore, that the claim is not supported by the applicable Agreement and should be denied.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employes, 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.

All data contained herein have been presented to the employe involved or to his duly authorized representative.

(Exhibits not reproduced.)

OPINION OF THE BOARD: This case is fraught with conflicting assertions and contentions, unsupported allegations and inadmissible charges and claims.

Simply and tersely stated the only question to be resolved is as follows:

Was the Claimant or Mr. M. H. Rancourt entitled to the extra clerical assignment on August 12, 1955, under prevailing rules?

The Carrier contends that it properly called Clerk Rancourt because he was a regularly assigned clerk in the "400" Yard from 3:00 P. M. to 11:00 P. M. and had made written application for extra work. The organization claims that Rancourt was junior in seniority to the Claimant and that the Claimant had made written application for extra work.

Let us now turn to the record for facts that will confirm or dissaffirm this claim.

The pertinent agreed upon facts are as follows:

1. That Claimant's seniority date is March 10, 1942, and that M. H. Rancourt's seniority date is May 12, 1947;

2. That the Claimant had been called for extra work assignments both before and after August 12, 1955;

3. That the Claimant had been called at his Trailer Park Home by the Carrier's Crew Callers both before and after August 12, 1955;

4. That Crew Dispatcher W. A Shumway made no effort to call anyone but Clerk Rancourt because he (Shumway) was busy and Clerk Rancourt was easy to reach;

5. That there were no extra clerks available; that the regular employe was not available; and the Carrier was required to use a regularly assigned clerk to fill the assignment. (Emphasis supplied.)

The pertinent disputed points are as follows:

1. Whether or not the Claimant had made written application for extra assignment work in keeping with the following provisions of Extra List No. 6:

> Paragraph 5: "Where work is required by management and no qualified employes, on this extra list are available, as provided in Rule 4-A-1 (i), qualified available regular employes whose positions are protected by this list, and who have made written application for extra work, will be given such work."
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> Paragraph 7: "When no extra employes, who have worked less than forty (40) hours in the work week are available, extra work that is not part of an assignment shall be performed by the regular employe, if available, as provided in Rule 4-A-1 (i), otherwise by the senior qualified available regularly assigned employe who has made written application for such work, subject to the provisions of Rules 2-A-1, 4-A-2 and 4-A-6."

2. Whether or not Clerk Rancourt had made written application for extra work assignment in keeping with the requirements of Rule No. 6, supra.

Although the agreed upon facts, supra, weigh heavily in favor of the Organization, the Board will also give substantial weight and credence to the disputed points, supra.

The Carrier alleged that the Claimant made no written application for extra work, whereas the Organization alleges that the Claimant made both written and oral applications for extra work. As neither party offered any admissible supporting evidence for its allegation, no credence can be given to their respective positions.

The Carrier also alleged that Clerk Rancourt had made written application for extra work, but the Carrier failed to offer any supportive evidence. Such evidence, as Rancourt's written application for extra work, if available, would be under the complete dominion and control of the Carrier. Therefore, if such evidence existed, it was incumbent on the Carrier to produce it. The Carrier's failure to do so, indicates that its allegation was lacking in merit and substance.

Accordingly, we must turn to the Seniority Provision (Rule No. 3) of the Labor Agreement and there we find undeniable support for the Organization's claim.

Therefore, the Carrier must pay the Claimant eight hours of straight time pay at his prevailing rate.

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 the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of October, 1961.