

Award No. 10764

Docket No. CL-10470

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Eugene Russell, Referee

PARTIES TO DISPUTE:

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

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 2-A-1 (e), 3-C-1, 4-C-1, 5-C-1, and the Extra List Agreement, when it removed Clerk E. F. Zakszewski from his regular clerical position, Rose Lake Yard, East St. Louis, Illinois, Southwestern Region and required him to fill vacancies on position Symbol B-64-G, on January 28, 1956, February 4, 5, 12 and 26, 1956, and March 1, 2 and 4, 1956.

(b) The Claimant, E. F. Zakszewski, should be allowed an additional eight hours' pay a day, as a penalty, for each day he was held off his regular position as shown above. (Docket 158)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representatives 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, 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. E. F. Zakszewski, the Claimant in this case, has a seniority date on the seniority roster of the Southwestern Region in Group 1. On January 28, and February 4 and 5, 1956, he was the regular incumbent

All data contained herein have been presented to the employee involved or to his duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The dispute in this case is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representatives of the class or craft of employees in which the Claimant in this case held a position and the Pennsylvania Railroad, hereinafter referred to as the Brotherhood and the Carrier respectively.

The Brotherhood claims violation of the Rules Agreement by the Carrier when it removed clerk E. F. Zakszewski from his regular clerical position, Rose Lake Yard, East St. Louis, Illinois, Southwestern Region and required him to fill vacancy on position Symbol B-64-G on January 28, 1956, February 4, 5, 12 and 26, 1956 and March 1, 2, and 4, 1956, as specifically hereinabove set forth on Page 6 of the record.

The joint statement of facts agreed upon by the Brotherhood and the Carrier is as follows:

"Clerical position, Symbol No. B-64-G, Rose Lake Yard, Illinois, tour of duty 8:00 A. M. to 4:00 P. M., rest days Friday and Saturday, rate of pay \$353.16 per month, was vacant on January 28, February 4, 5, 12, 26, March 1, 2 and 4, 1956, due to relief clerk No. 2, assigned to relieve B-64-G, being on special duty on Saturday, January 28, February 4, Friday, March 2, and the regular incumbent working as yard master on Sunday, February 5, 12, 26, Thursday, March 1, and Sunday, March 4, 1956.

"The claimant, E. F. Zakszewski, was the owner of clerical position, Symbol No. B-56-G, Rose Lake Yard, Illinois, tour of duty 8:00 A. M. to 4:00 P. M., rest days Wednesday and Thursday, rate of pay \$345.96 per month, on January 28, February 4 and 5, 1956; and clerical position, Symbol No. FS-25-F, Rose Lake Yard, Illinois, tour of duty 8:00 A. M. to 4:00 P. M., rest days Monday and Tuesday, rate of pay \$357.27 per month on February 12, 26, March 1, 2, 4, 1956. On January 28, February 4, 5, 12, 26, March 1, 2, 4, 1956, the claimant E. F. Zakszewski, was required to work clerical position, Symbol No. B-64-G and the vacancies in the claimant's position were filled by extra clerks.

"On January 28, February 4 and 5, 1956, the claimant was paid the rate of B-64-G, \$353.16 per month, which was higher than rate of B-56-G, \$345.96 per month, and on February 12, 26, March 1, 2 and 4, 1956, he was paid the rate of FS-25-F, \$357.27, which was higher than the rate of B-64-G."

The issue to be decided in this case is whether or not the Carrier violated the Rules Agreement, effective May 1, 1946 except as amended, particularly Rules 2-A-1, 3-C-1, 4-C-1 and 5-C-1, when it required the Claimant, E. F. Zakszewski, to suspend work on his regular positions Symbols B-56-G and FS-25-F at Rose Lake Yard on the dates shown in the claim, and perform the duties of position symbol B-64-G.

From a careful study of this record including the exhaustive briefs filed by the parties your Board in this case does not find any violation of the Rules Agreement.

There is no evidence in this record that the claimant, E. F. Zakszewski, was required to fill vacancy on another position for the purpose of "avoiding overtime" or that there was any other qualified Employee available to fill such position.

In view of the foregoing facts this case is clearly distinguishable from Award No. 4690 and other awards cited and relied upon by the Brotherhood. In the instant case the Carrier was required to fill the Claimant's positions with another Employee and Claimant was paid the higher rates applicable under the Agreement.

The conclusions reached by the Board on the facts of this record are in line with the principles enunciated in numerous prior Decisions of this Board, as well as by the Special Board of Adjustment 374, involving the same parties.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 7th day of August 1962.