

Award No. 10944

Docket No. CL-10913

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerks' Agreement at Pittston, Pa., on February 27, 1956 and subsequent dates when work coming within the coverage of the Clerks' Agreement is assigned to and performed by employees not coming within the coverage of the Clerks' Agreement, depriving employees carrying seniority on Seniority Roster #21-A for the year 1956, within the coverage of the Clerks' Agreement, of the opportunity to perform these duties in their seniority order, and

That the Carrier shall now compensate employee William G. McHale for all wage loss sustained by reason of the above-mentioned violation of the Clerks' Agreement at Pittston, Pa., February 27, 1956 and recurrences on subsequent dates claim to be continuous until such time as violation complained of is corrected. (Claim #1176)

EMPLOYES' STATEMENT OF FACTS: On August 1, 1955 a new Agreement between the Erie Railroad Company and the Brotherhood of Railway Clerks became effective and which superseded previous agreement. This Agreement revised the previous agreement and contains provisions not in the previous agreement.

In the peak years of the Coal Mining Era, the performance of duties and work at various Breakers and Mine Collieries was performed by Yard Clerks and Demurrage Clerks employed by the Erie Railroad Company in the Avoca and Pittston Territory (Wyoming Division of the Erie Railroad) where the Erie Railroad Co. was and still is one of the leading railroad coal carriers and suppliers of empty hopper cars to various coal operations on the Wyoming and Jefferson Division of the Erie Railroad. The Pennsylvania Coal Company up to the present time has been and is one of the largest coal mining operating companies and is serviced by the Erie Railroad Company.

(1) this work is not assigned to them by specific reference in the Agreement;

(2) Organization has failed to prove that this work belongs to its members to the exclusion of all other classes or crafts on Carrier's system;

(3) there is no definite knowledge or proof that claimants have "lost", have been "injured";

(4) The Agreement here applicable is not a sectional, but is a system-wide agreement; and

(5) the evidence of record would indicate that a prior Award of this Division, 7031 (Carter) covers the issue here before us:

* * *."

As indicated by the above-cited Awards, each involved work which was performed by employees of the Carrier on the property of the Carrier, and each was denied for the several reasons set out in the Awards themselves. Here the situation is one where Petitioner has undertaken a studied attempt to broaden its field to include the work and employees of an outside industry. The Carrier submits that the Board has no jurisdiction over either the Pennsylvania Coal Company or its employees. Therefore, no Award of the Board can be made binding upon the Coal Company or its employees.

The Carrier has shown that the employees of the Coal Company are not now performing any work which has not been performed by them or other employees of either the Pennsylvania Coal Company or No. 9 Coal Company since 1905. The Carrier has also shown that the work which petitioner is seeking has never been subject to the Clerks' Agreement and that employees thereunder have never performed it.

The Carrier submits that the facts herein clearly reveal that Petitioner failed to comply with the terms of Rule 41, and for that reason the matter is not properly before the Board. In addition, the facts clearly show that the claim is without foundation under the Agreement.

Therefore, the claim should either be dismissed without considering the merits, or it should be denied because it has no merit.

All data herein are known to or have been discussed with the General Chairman.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between The Brotherhood of Railway and Steamship Clerks and The Erie Railroad Company.

In the peak years of the coal mining era the performance of some work at various Breakers and Mine Collieries was performed by Yard Clerks and Demurrage Clerks employed by the Erie Railroad.

Prior to the first Clerks' Agreement in 1936, the work of the Yard Clerks and Demurrage Clerks of Carrier was gradually turned over to the Pennsylvania Coal Company. The Erie Railroad under their contract assumed a portion of the wages of the Employees who performed this work. The Agreement with the Coal Company expired. On August 1, 1955 a new Agreement between the Employees and the Erie Railroad became effective. The Carrier then entered into a new Agreement with the Coal Company similar to the former Agreements. The Claimant contends that the Agreement of August 1, 1955 gives the Employees the right to the work.

The Carrier contends that no proper claim was filed. There are other contentions by the Carrier but we shall not discuss them for we believe the claim should be dismissed. The claim as originally submitted reads as follows:

"It is the claim of the Local Protective Committee of Lodge #1174, Avoca, Pa. of the Brotherhood of Railway Clerks that the Carrier violated the Clerks' Agreement of August 1, 1955 at Pittston Breaker, Pittston—Pa., when work coming within the coverage of the Clerks' Agreement is assigned to and performed by employees not coming within the coverage of the Clerks' Agreement, depriving Roster "A" clerical employees coming within the coverage of the Clerks' Agreement of the opportunity to perform this clerical work in their seniority.

"It is further the claim that the senior employe for the position and all other employees affected be reimbursed for all wages lost or losses be sustained by reason of the above mentioned violation of the Clerks' Agreement at Pittston, Penna., on February 27, 1956 and reoccurrences on subsequent dates, claim to be continuous until such time as violation complained of is corrected."

The claim was denied as follows:

"ERIE RAILROAD COMPANY

"File GYM-41

"Avoca, Pa.

May 4, 1956

"Mr. C. F. Acculto
Asst. Div. Chairman
Dunmore, Penna.

"Reference your claim of Senior Employe's and all other employees, alleging violation of Clerks' Agreement because of work performed by L. Goldman and employees of Pennsylvania Coal Co. at Pittston Colliery.

"Your claim for un-named employe is not proper under Article Fifth Section 1-9 of August 24, 1954 Agreement and it cannot be considered.

"/s/ J. F. Decker
General Yardmaster

"cc: C. S. Kinback"

An appeal of the claim was taken. The original claim is the only one under consideration. Carrier did not waive the defect of unnamed Claimants.

We concur with that line of opinions that the description of the Claimant was too general, vague, indefinite, and uncertain.

For the foregoing reason believe that there was no violation of the Agreement.

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 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December 1962.