

Award No. 11049

Docket No. CL-10790

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, 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 Rule 3-A-1, and Items 6 and 7 of Extra List Agreement No. 6, when it used an Extra Clerk, who already had in forty hours of work, to work an extra clerical position at Hawthorne Yard, Indianapolis, Indiana, Southwestern Region, at 3:30 P. M., Saturday, October 27, 1956.

(b) The Claimant, J. C. Miller, regularly assigned Relief Clerk at Hawthorne Yard, who was qualified and available to work the extra position, should be allowed eight hours pay, at the punitive rate, for Saturday, October 27, 1956. [Docket 214]

EMPLOYES' 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, 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.

The Claimant, J. C. Miller, was the incumbent of regular clerical Relief Position No. 5, at Hawthorne Yard, Indianapolis, Indiana, Southwestern Region. He has a seniority date on the seniority roster of the Southwestern Region in Group 1. His tour of duty is Position B-14-G, 7:30 A. M. to 3:30 P. M., Saturday and Sunday; Position B-54-G, 11:30 P. M. to 7:30 A. M., Monday; Position B-47-G, 3:00 P. M. to 11:00 P. M.,

OPINION OF BOARD: The Carrier has admitted that it violated Extra List Agreement No. 6 when it erroneously assigned Extra Clerk, C. W. Philpott to work in the Hawthorne Yard beginning at 3:30 P. M. on October 27, 1956. Two claims for a day's pay at the time and one-half rate were filed. One claim, dated October 28, 1956, was filed by regular employe, L. B. Young and it read:

"Please allow me pay at appropriate rate account using Philpott on extra job October 27 when he had his 5 days."

On the same date—October 28, 1956—a claim was also filed by Claimant, J. C. Miller, also a regular employe and it read:

"Please allow 1 day at time and one-half for using a extra man on a extra job. Called for 3:30 P.M. 10/27/56. Extra 2nd trick West Bd. The extra man had already put in his five days for the week. I was available but not called."

The parties admit that employe, L. B. Young had greater seniority and as such would ordinarily have been entitled to be used on the assignment in question under the terms of the Extra List Agreement. He was paid by Carrier in accordance with his claim.

The Organization contends, however, that Young was not available for work on that assignment because Young was at the Purdue football game in Lafayette, Indiana. The Organization also contends that when Claimant first presented his claim to Lead Clerk R. F. Ball, Mr. Ball advised Claimant "that he (Mr. Ball) would first have to talk to Mr. L. B. Young, a clerk senior to Claimant, to determine whether or not Mr. Young desired to submit a claim." This is denied by Mr. Young who, in a statement filed in the record, says:

"Indianapolis, Ind.

June 11, 1957

"Mr. G. E. Williamson.

In reference to your request for a statement from me in regard to clerical case No. 77-56.

As stated in my letter of Dec. 28, 1956, my claim was filed due to the fact that no effort was made to contact me for this job.

At no time did Mr. Ball ask me to file a claim in connection with this case."

It is the position of the Organization that, since Young was not available, Claimant should have been paid for the assignment, not Young. This, they argue, is true whether or not Claimant made application for such vacancy. In support of this position, the Organization cites Award 10109 (Daly). In that case neither party offered any admissible supporting evidence that the Claimant did or did not make written application for extra work.

Extra List Agreement No. 6, negotiated pursuant to authority granted in Rule 5-C-1 provides, in part, as follows:

“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-C.”

This language is clear and unambiguous. Unless a senior qualified available regularly assigned employe has made written application for extra work he is not entitled to be assigned to such extra work or to be paid for same when Carrier erroneously assigned an employe who was not available under the terms of the Agreement. We have no right to modify this intent. It may be changed only in negotiations between the parties.

The evidence in the record shows that employe, L. B. Young “had a written request for extra work on file. Claimant, J. C. Miller did not have a request on file.” Nowhere in the record does the Organization categorically deny these facts. It is not sufficient evidence to comply with the terms of the Agreement to say that “Claimant was available and qualified and made verbal request to work the extra position.”

Whether Young was “available” to work that assignment is immaterial in this case because Claimant did not make written application for extra work as required in Extra List Agreement No. 6. If he had made such written application, then the evaluation of the evidence on “availability” would have been appropriate.

It is clear that on the basis of the evidence in the record, this case is clearly distinguishable from the lack of evidence in Award 10109.

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 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 the Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1963.