

Award No. 11620

Docket No. CL-11012

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

CHICAGO AND ILLINOIS MIDLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The Carrier violated and continues to violate the current Clerks' Agreement effective February 1, 1938, revised and reprinted April 1, 1953, when it assigned duties of the Transportation Timekeeper to Mr. O. J. Downen, Shop Timekeeper and Mr. F. H. Harris, MofW Timekeeper, effective January 20, 1958.

2. That Carrier shall now be required to compensate Claimants Downen and Harris and their successor or successors, if any, at the rate of the Transportation Timekeeper beginning January 20, 1958 and continuing on each date thereafter when so used until correction is made.

NOTE: Reparations due employees to be determined by joint check of Carrier's payrolls and such other reasons that may be deemed necessary.

EMPLOYEES' STATEMENT OF FACTS: In July 1955 the timekeeping positions located in various offices were as follows:

Position	Office	Location
Chief Payroll Accountant	Accounting	Ill. Bldg.
Payroll Clerk	Accounting	Ill. Bldg.
Asst. Payroll & Material Clerk	Accounting	Ill. Bldg.
Shop Timekeeper	Master Mechanic	Shops, Ill.
Asst. Shop Time. & Asst. AAR Clk.	Master Mechanic	Shops, Ill.
Chief Transportation Timekeeper	Supt. T & E	Shops, Ill.
Transportation Timekeeper	Supt. T & E	Shops, Ill.
General Clerk	Supt. T & E	Shops, Ill.
M of W Timekeeper	Chief Engineer	Ill. Bldg.

AWARD 1314 (Third Division)

"... The claim as first presented was changed during the course upward from the Superintendent to the Assistant Vice President and as presented to the Board contains additional items. This certainly was not in accord with Section 3, First (i) of the Railway Labor Act, and if the claim had been presented ex parte would have to be remanded to be processed through channels. But the presentation is joint, although the carrier protests and calls attention to the changes. But it is inconsistent to join in a claim as presented to the Board and at the same time maintain that it is not properly before the Board. When the carrier joins in a claim as presented, it agrees that such is the claim which is before the Board. Otherwise it should refuse to join. The requirement of Section 3, First (i) of the Railway Labor Act is not a condition of jurisdiction of this Board . . ."

AWARD 9660 (First Division)

"... The claim covered by the submission not having been presented to or handled with the carrier, it must be dismissed."

AWARD 9818 and 9819 (First Division)

"The original claim having been amended and the amended claim not having been handled properly with the carrier leaves nothing for the Division to decide."

AWARD 17757 (First Division)

"... A claim cannot be changed on appeal to this Board. We have said many times that a claimant may not thus mend his hold and present a different claim here from that handled on the property. It constitutes a fatal departure from the issues . . ."

AWARD 15894 and 15895 (First Division)

"Here the Division ruled where a claim was handled on the property as a trainman's claim for one day's pay, but Statement of Claim was amended by the General Committee, in submission to N.R.A.B., to include all other Conductors and Trainmen on all subsequent dates, the claim was dismissed without prejudice because it was not processed in accordance with schedule rules on the property."

AWARD 16390 (First Division)

"The claims in this docket are erroneously stated. Therefore, the claims are dismissed without prejudice to the rules that may be involved."

AWARD 16615 (First Division)

"There is no evidence of proper handling of the revised claim as required by Section 3, First (i) of the Railway Labor Act prior to its submission here. The claim contained in the submission is therefore dismissed without prejudice to the position of either party."

AWARD 18453 (First Division)

"The Division, after a study of this record, concludes that the claim presented here is not the same as the claim considered on the property. Hence, this claim will be dismissed without prejudice."

Other awards are: First Division 16902, 16906, 16979, 17296 and 17306.

CONCLUSION

The Brotherhood here seeks to penalize the carrier for eliminating a lower-rated position and assigning the remaining duties thereof to higher-rated positions when the amount of work in a six-man timekeeping and payroll bureau decreased by over 20 per cent. The claimants have been properly compensated for the work here involved in accordance with the rules, agreement and long established practices on this property.

A denial is therefore respectfully requested.

All data in support of the carrier's position in connection with claims has been presented to the duly authorized representative of the employees and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential issue under the facts of record here is whether some of the higher-rated work of the position of Transportation Timekeeper was required to be performed by occupants (Claimants) of lower-rated positions, i.e., Shop Timekeeper and Maintenance of Way Timekeeper? If so, Claimants should have been compensated at the higher rate as claimed, under Rule 56.

Thus the case turns on a question of fact: When the position of General Clerk Typist was abolished on January 8, 1958, did all the work of posting, figuring and extending Enginemen's time rolls "flow back" to the position of Transportation Timekeeper from that date until January 20, 1958, when Claimants were used to figure and extend those time rolls?

Other than a mere assertion by Petitioner, denied by Carrier, there is no evidence in this record that the Transportation Timekeeper did, in fact, perform the work of figuring and extending Enginemen's time rolls from January 8 to January 20, 1958. Petitioner must establish this key fact by competent evidence in order to support its allegation that "all the work pertaining to Timeroll 29 (Enginemen) flowed back to . . . the Transportation Timekeeper position and was performed exclusively by him from January 8, 1958 until January 20, 1958 when Claimants . . . were utilized to figure and extend timeroll 29 (Enginemen) . . ." (Emphasis ours.)

Having failed to make a conclusive showing on this determinative question of fact, Petitioner's allegation that Claimants performed work belonging to the higher-rated position cannot be sustained, nor can it be held that Rule 56 of the Agreement was violated. Accordingly, the claim must be denied.

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 19th day of July 1963.