

Award No. 12511
Docket No. CL-12173

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, 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 (GL-4810) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, by requiring and permitting the Agent at Decatur, Illinois Freight Station, South-western Region, to perform clerical duties at that location that accrue to, and are ordinarily performed by, Clerks covered by the Clerks' Rules Agreement.

(b) The Claimants, Clerks R. D. Frushour and B. S. Chandler, should be allowed eight hours' pay a day, as a penalty, retroactive ninety days to August 30, 1957, and continuing until the violation is corrected and the work restored to clerical employees covered by the Clerks' Rules Agreement.

(c) Claims filed and progressed under the provisions of Rule 7-B-1. Any amounts due the Claimants to be determined by a joint check by representatives of the Carrier and the Brotherhood.
(Docket 531)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimants in this case held positions 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.

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

CONCLUSION

The Carrier has shown that the Agent at Decatur Freight Station performs no work accruing exclusively to clerical employes, that no provisions of the Rules Agreement were violated, and that the Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimants were the regular employes of clerical positions designated as F-82-F and F-84-F, located at the freight office at Decatur, Illinois. On November 1, 1957 the truckers position was abolished and the remaining work was assigned to the three Class I, clerical positions, at the location, including the Claimants herein. This change in the work routine, the Claimants contended, violated the Scope Rule in that it required the Agent to perform routine clerical work in excess of four hours per day. In addition, it was alleged that, the Agent was required to return to the station after closing hours in order to complete clerical work.

The Carrier contended that the work in dispute, performed by the Agent, was not in excess of four hours per day. Furthermore, the Agent had performed such work in the past and such duties as were in dispute were incidental to his position as Agent.

The question to be determined in this dispute is: Did the Carrier violate the Scope Rule of the Clerks' Agreement when it permitted the Agent at this station to perform routine clerical work in excess of four hours per day?

A great deal of the evidence offered by the Claimants tends to show that since the truckers position was abolished the Agent assumed a great deal of routine clerical work. This situation was alleged to have been brought about by the necessity of the Class I clerks being required to perform the truckers work. In fact the work assumed by the Operator was so great he could not complete it during his shift and was required to return after the station was closed to complete the work.

The record is in sharp conflict as to the extent of the clerical work performed by the Operator. The Carrier denies that the Agent assumed any additional clerical duties after the abolishment of the trucker's position. It vehemently denies that the clerical work is in excess of four hours per day or that the duties he is now performing are different, but rather, his present duties are similar to those performed prior to the abolishment of the truckers position. The Carrier further alleges that the Agent at this location traditionally performed some work of a clerical nature, a part of their regular duties as Agent, without infringement on the Clerks' Agreement.

Thus the evidence in the record is in sharp conflict as to whether the routine clerical work performed by the Agent is in excess of four hours per day. It is apparent, that this deficiency in the record makes it impossible to determine what amount of work the Operator does perform. Accordingly, the case will be remanded to the parties to jointly or severally develop the facts to enable this Board to pass upon such facts as presented, with the privilege to resubmit the dispute with the facts more fully developed in the event of failure to reach 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 Employee involved in this dispute are respectively Carrier and Employee 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 dispute shall be remanded to the parties to jointly or severally develop the facts and to make further effort to resolve the dispute.

AWARD

Claim remanded in accordance with above Opinion without prejudice, to resubmit the dispute if not disposed by them.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1964.

CARRIER MEMBERS' DISSENT TO AWARD 12511, DOCKET CL-12173 (Referee Kane)

In this award, the Majority, consisting of the Referee and Labor Members callously ignored one of the cardinal principles established and repeatedly confirmed by this Board that the Petitioner has the burden of proof and in those instances where this burden has not been properly assumed, the claim will be denied. Here, the Majority concedes there is a "deficiency in the record" and a "sharp conflict" in the facts. Under these circumstances, the only lawful decision was one denying or dismissing the claim.

The initial claim was filed in November, 1957 with the Carrier and finally submitted to the Board June 16, 1960. This was more than ample time for Petitioner to develop facts to support their claim. Beyond that however, the Majority has absolutely no right or power to give the Petitioner a second chance to make a case. The Board's files are full of cases where the Carrier allegedly failed to offer a suitable defense or adequate evidence to rebut that submitted by the Organization, and for that reason, the claims were sustained. We would like to believe that this is a two-edged sword and applies equally well when the facts show, as they do here, that the Petitioner failed to make a case. This claim should have been denied or dismissed with prejudice.

W. F. Euker
R. E. Black
R. A. DeRossett
G. L. Naylor
W. M. Roberts