

Award No. 12682
Docket No. CL-12402

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

**RAILROAD DIVISION, TRANSPORT WORKERS UNION
OF AMERICA, A. F. L. - C. I. O.**

DONORA SOUTHERN RAILROAD COMPANY

STATEMENT OF CLAIM: Request that A. Farquhar be paid the time and one-half rate of pay for each hour worked as shown below: June 15—3 hours; July 8—3 hours; July 9—3 hours; July 10—3 hours; July 13—3 hours. On these dates A. Farquhar was used as a relief clerk when in reality he can only be used to perform the duties pertaining to the Storeroom. This is in accordance with paragraph one of the Scope Rule of the Clerks Agreement.

EMPLOYEES' STATEMENT OF FACTS: This claim originated at Donora, Pa., and is known as Clerks Claim #6-59.

A. Farquhar is the Storehouse Keeper and as such has no rights to perform any work of any other clerk in another department only his own work in his own department.

On the days mentioned above he did perform the work of another clerk in another department and this work should have been performed by the relief clerk as per Rule 2-2-E last paragraph.

K. Schmalbach was the relief clerk and should have performed the work that had been done by Storehouse Keeper A. Farquhar.

The Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement, effective July 16, 1953 and revised October 1, 1957, covering the Clerical, Office, Station and Storehouse Employees with the Donora Southern Railroad Company, copy of which is on file with the Board and is by reference hereto made a part of these Statement of Facts.

POSITION OF EMPLOYEES: That A. Farquhar held a regular position as Storehouse Keeper and as such had no right to perform the work of another clerk in another department but since he was so used that he be paid as asked for in his original claim.

The Scope Rule, paragraph one, reads as follows and should have been abided to by the carrier:

The small amount of miscellaneous clerical duties performed by the claimant became unassigned work left by the "General Relief Clerk" when he was properly assigned under Rule 2, Section 2 (e), " * * * to "work vacancies however created, if available." In this connection see Carrier's position in claim identified locally as Clerk's Claim No. 5-59 in behalf of the General Relief Clerk, Kenneth Schmalbach, appealed by the Organization to this Division concurrently with the instant dispute. The Position of Carrier in that claim is made a part of the Position of Carrier in this dispute by reference.

For the foregoing reasons, it is respectfully submitted that this claim must be denied.

OPINION OF BOARD: Claimant held the position of Storekeeper. On June 15, July 8, 9, 10 and 13, 1959, he performed some of the work of the General Relief Clerk who was filling vacancies. He was able to perform the work of his own assignment and do some of the disputed work without overtime. He was paid straight time hours for his work on those days. The claim is for additional pay for the hours worked at the time and one-half rate.

Petitioner contends that Claimant as Storekeeper "had no right to perform the work of another clerk in another department but since he was so used that he be paid as asked in his original claim." It is also contended that the relief clerk should have been used.

The record shows that the General Relief Clerk was filling vacancies on the dates of the claim. He was not available for other work. Section 2(e) of Rule 2 provides that the General Relief Clerk "will work vacancies however created, if available." He was available and he worked vacancies on the above dates.

Petitioner has failed to prove that Carrier violated any provisions of the Agreement. There is *no probative evidence that Claimant suspended work to absorb overtime under Rule 5.*

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1964.