

Award No. 12685
Docket No. CL-12365

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

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

DONORA SOUTHERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim involves John Chanko, Clerk. It is requested that I be paid eight (8) hours at the straight time rate for the following dates: August 8, 9, 10, 11, 12, 13, 14, 24, 25, 26, 27, 28, 31, September 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, October 1, 2, 1959. On these dates the supervisors of the M. of W. performed the duties of the clerk M. of W. This is a violation of Rule 1, paragraph 1 of the Clerks Agreement.

EMPLOYES' STATEMENT OF FACTS: This claim arose at Donora, Pa., and is known as Clerks Claim #8-59.

On the days in question the M. of W. employes worked, but no clerk was called out to perform the clerical work for those employes, such as keeping their time and other duties that are required of the clerk when the M. of W. employes work. This was during the Steel strike and the Steel organization allowed the M. of W. employes to enter upon the carrier's property to perform M. of W. work.

The supervisors did the work that is ordinarily done by the M. of W. clerk when all employes are working for the carrier. When we say all employes are working we mean the employes of the carrier in other departments.

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

POSITION OF EMPLOYES: That when the employes of the M. of W. Department were recalled to work, that Clerk J. Chanko should have also been recalled so that he could perform the clerical work instead of having the supervisors perform this clerical work.

Since the supervisors did perform the work of the clerk the agreement

POSITION OF CARRIER: This claim as filed and processed fails to set forth the nature of the work allegedly performed by the Supervisors, what work was performed on which of the thirty-seven (37) specified dates, by whom it was performed, the amount of time allegedly expended on each specified date, etc. The source of information on which a claim for penalty time is based should be furnished for proper examination and evaluation. This claim should be dismissed as being too vague, indefinite, speculative and lacking in the specificity required by Section 3, First (i) of the Railway Labor Act.

Subject to the foregoing, and expressly reserving its rights in connection therewith, the Carrier submits the following with respect to the merits of the claim.

Although the claim does not set forth the nature of the work allegedly performed by Supervisors, the Committee stated in conference that the foremen kept the time of the employees in their respective gangs. These time records have always been kept by the foremen, and the posting for payroll purposes is performed in the Accounting Department and never by the Maintenance of Way clerk. In addition to this recognized and established past practice, it has been held by numerous Awards of the Third Division that Supervisors can perform work of a clerical nature which is incidental to their own duties. The keeping of the time of employees under a particular foreman's supervision clearly falls in this category.

Although the Carrier expressly denies that the foremen or any other Supervisor performed any work belonging to the clerk's craft under Rule 1, Scope, but assuming that such were the case, no proper allowance could be made because there is no allegation nor record to establish the nature of such work and the extent of time involved in its performance. If work belonging exclusively to clerks was in fact performed, and in the absence of proof as to the time involved in such performance, there is no support for a claim for a full day on each of the specified dates.

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

OPINION OF BOARD: On the days noted in the claim a nation wide steel strike shut down the Carrier's principal shipper. The striking union permitted a skeleton force of Maintenance of Way employees to enter the shipper's premises to maintain and repair the tracks.

Prior to the strike Claimant held a position of Clerk and was assigned to work in both the Maintenance of Way and in the Car Departments. During the strike he was furloughed.

Petitioner alleges that supervisors performed work which should have been done by Claimant. Nowhere in the record does Petitioner show what clerical work the supervisors performed on the dates involved in the claim. In its Ex Parte Submission, Carrier states that "in conference it was contended by the Grievance Committee that foremen kept the time of the employees under their supervision. Under normal operations with a Maintenance of Way clerk on duty, foremen have consistently kept the time records of the employees they supervise." Nowhere in the record does Petitioner deny this statement.

A mere assertion is not probative evidence. The burden of proof is upon Petitioner. This it has failed to meet.

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.