

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**

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5038) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 2-A-1, when it failed to bulletin a clerical position at Davenport Street Freight Station, Cleveland, Ohio, Lake Region, which has been filled since January 18, 1960, by Mr. C. E. Slavens, Assistant Agent, who is not covered by the Clerical Rules Agreement.

(b) The Claimant, Clerk T. A. Duricky, should be allowed eight hours' pay a day for January 18, 1960, and all subsequent dates, until the violation is corrected. (Docket 863.)

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 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, T. A. Duricky, is the incumbent of regular clerical position Symbol No. F-8, at Davenport Street Freight Station, Cleveland, Ohio, Lake Region. He has a seniority date on the seniority roster of the Lake Region in Group 1.

Prior to October 16, 1957, a clerical position titled Cashier, Symbol No. F-7, was in existence at Davenport Street Freight Station. When position

This provision contemplates that such suit "shall proceed in all respects as other civil suits" with the exception that the findings of the Adjustment Board as to the stated facts will be accepted as prima facie evidence thereof. It is clear this provision contemplates the application of the same rule of damages and the same rule against penalties in enforcing contracts as are applied in civil suits generally. An award contrary to these principles would be unenforceable as a matter of law.

For the foregoing reasons, it is respectfully submitted that your Honorable Board may not properly enter such an award in this case.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To Said Agreement And To Decide The Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out "of grievances or out of the interpretations or application of Agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties thereto. To grant the claim of the Employees in this case would require the Board to disregard the Agreements between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not 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 work involved in this dispute, as performed by the Assistant Agent at Davenport Station was not work reserved exclusively to clerical employees by the Clerks' Rules Agreement or otherwise, and that its performance by the Assistant Agent was not in any way violative of said Agreement.

Therefore, the Carrier respectfully requests your Honorable Board to deny the Employees' claim in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: Notice of the pendency of this dispute was given The Order of Railroad Telegraphers in accordance with the requirements of Section 3, First (j) of the Railway Labor Act. That organization declined to participate in this proceeding. Accordingly, the Board will consider the case on the merits.

A Joint Statement of Agreed Upon Facts is in evidence, reading as follows:

"JOINT STATEMENT OF AGREED UPON FACTS: Claimant T. A. Duricky held position of Clerk, Symbol No. F-8, 1st trick, Davenport Street Freight Station, with Saturday and Sunday rest days.

As the result of position F-7, 1st trick, Davenport Street Freight Station, being abolished effective October 16, 1957, a questionnaire time study was prepared for position F-8 since the remaining work of the abolished position was absorbed by this position. Position F-8 was required to supervise 9 clerical employees, and in order to establish a proper rate of pay for this position, 10% of the highest rated position supervised was added to the basic rate.

When a new IBM accounting procedure was established at Davenport Street Freight Station, it replaced accounting work formerly performed by other methods.

Effective January 18, 1960, Assistant Freight Agent, C. E. Slavens was placed in charge of the IBM accounting procedure at Davenport Street Freight Station, and performs the following items of work:

Obtains waybills from Revision Bureau at Cleveland and distributes work to clerical employees; checks codes applied to waybills; uses adding machine to verify work performed by clerks; checks with zone clerks relative to errors discovered; checks corrections prepared by clerks; develops accounts delinquent and instructs clerks as to handling to effect payment; uses Recordak to verify inquiries from Auditor.

Claim is presented by clerical committee account violation of Rule 2-A-1 of the Schedule Agreement due to failure to advertise a new clerical position when Assistant Agent Slavens was assigned to perform service daily at Davenport Street Freight Station."

The issue here is whether the items of work set forth in the foregoing factual statement were of the type and character to require performance thereof by an employee covered by the Clerks' Agreement.

This is a case where the character of the work determines the issue involved. It is clear from the agreed upon facts that the duties performed by the Assistant Agent were preponderantly supervisory in character. Such clerical work as he did perform was relatively minor and directly incidental to his primary supervisory duties and responsibilities. Such incidental clerical work may properly be performed by employees not covered by the Clerks' Agreement. (See Awards 8342, 9244, 9639, 12434.)

There is no evidence of record to support the conclusion that a new clerical position was in fact, created by the Assistant Agent's performance of the stipulated items of work. Accordingly, the Board finds no violation of Rule 2-A-1 of the Agreement, as alleged.

The claim, accordingly, lacks rule support and 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 17th day of September 1964.