

Award No. 12906  
Docket No. CL-13088

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

William H. Coburn, Referee

**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-5068) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, when it required and permitted a Trainman, not covered by the Clerks' Rules Agreement, Mrs. E. M. Kendler, to perform clerical duties in the Crew Dispatcher's Office, Pennsylvania Station, New York, New York, former New York Division.

(b) The Claimant, Clerk-Crew Dispatcher Morris Fogel, should be allowed eight hours' pay a day, for December 29, 1954, and all subsequent dates on which the violation has occurred, until corrected.

(c) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, when it required and permitted Passenger Trainman, Mr. Harold Kendler, to perform clerical duties in the Crew Dispatcher's Office, Pennsylvania Station, New York, New York, former New York Division.

(d) The Claimant, Clerk-Crew Dispatcher Morris Fogel, should be allowed eight hours' pay a day, for December 11, 1954, and all subsequent dates on which the violation has occurred, until corrected.

(e) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, when it required and permitted Passenger Trainman Mr. C. J. Foye, to perform clerical duties in the Crew Dispatcher's Office, Pennsylvania Station, New York, New York, former New York Division.

(f) The Claimant, Clerk-Crew Dispatcher Morris Fogel, should be allowed eight hours' pay a day, for December 11, 1954, and all subsequent dates on which the violation has occurred, until corrected. (Docket N-388.)

**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

" . . . Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the Adjustment Board shall be prima facie evidence of the facts therein stated."

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 The Said Agreement And To Decide The Present 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 Passenger Trainmen in connection with the 1955 vacation schedule for Passenger Trainmen of the New York district was not work reserved exclusively to clerical employees by the Clerks' Rules Agreement or otherwise, and that its performance by the Trainmen representatives 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 Brotherhood of Railroad Trainmen in accordance with the requirements of Section 3, First (j) of the Railway Labor Act. The Organization declined to participate in this proceeding. The Board will, therefore, proceed to a consideration of the case on the merits. The claim here presents the same issue and involves the same parties as in Award 12905. That award is, therefore, controlling here and this claim will also 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 Employes involved in this dispute are respectively Carrier and Employes 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.