

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, 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-4895) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 2-A-1, when it used John Kenney, a Group 2 Loader-Trucker at Butler Street Freight Station, Philadelphia, Pennsylvania, Philadelphia Region, to perform duties not included among the advertised duties of his position, and failed to bulletin the position or the duties it assigned to him.

(b) The Claimant, V. J. Hollimon, should be allowed eight hours' pay a day commencing retroactive ninety days from March 20, 1957, and continuing until the violation is corrected. [Docket 668.]

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes 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 Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (c), 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 in this case, Mr. V. J. Hollimon, is the incumbent of a bulletined Group 1 position of Extra Tallyman at Butler Street Freight Station, Philadelphia, Pennsylvania, Philadelphia Region, and has a seniority date on the seniority roster of the Philadelphia Region in Group 1.

the Agreement, a claimant would be entitled to no more than his actual monetary loss, if any.

For the foregoing reasons, it is respectfully submitted that your Honorable Board may not properly enter an award in this case sustaining a "penalty" claim.

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 the Agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that there has been no violation of the applicable Agreement in the instant case and that the Claimant is not entitled to the compensation which he claims.

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: V. J. Hollimon occupied the position of Extra Tallyman in Group 1 at the Butler Street Freight Station. At the same station J. J. Kenney held Group 2 position of Loader-Trucker-Stower since June 30, 1954. Claimant Hollimon contends that Carrier violated the Agreement, specifically Rule 2-A-1, when Mr. Kenney was used to perform duties not identified with his regular position as advertised in Miscellaneous Forces' Bulletin No. 26, dated June 30, 1954.

Organization takes the position that by assigning Mr. Kenney to perform Group 1 clerical type of work in lieu of his normal and customary Group 2 work of loading trucks and stowing freight, Carrier created a new Group 1 position. It further maintains that when Mr. Kenney did predominantly Group 1 work, Carrier had a duty to bulletin the new position and to give Claimant an opportunity to exercise his seniority and bid for the position.

To resolve this dispute it is necessary to know what extent Mr. Kenney performed duties other than those designated as accruing to his Group 2 position as defined in the advertising bulletin. The bulletin indicates the primary duties but does not preclude the performance of work incidental to these duties. Organization relies on information from Claimant Hollimon for the

kind of duties Mr. Kenney performed and for the time he devoted to Group 1 duties. It also points to the joint statement of facts to support its position that the predominant duties of Mr. Kenney on his eight hour tour of work were activities such as placing ballot boxes in cars, notifying extra employees of the following day's assignment, and collecting ballots from the ballot boxes, work clearly not accruing to a Loader-Trucker-Stower.

Carrier, on the other hand, also cites the joint statement of facts to sustain its assertion that work performed by Mr. Kenney, other than that advertised in the bulletin, constituted merely chores or odd jobs performed incidentally at any freight station and that his work required no more than two hours per day. It further refers to Mr. Kenney's signed statement that he spent only two or two one-half hours in clerical work as compared with the rest of the day which was used for regular Loader-Trucker's work.

The record fails to help us resolve this conflict of fact. We cannot, with certainty, say that Mr. Kenney performed primarily clerical duties accruing to Group 1; and, therefore, we cannot conclude that a new position in Group 1 was created. Furthermore, the Scope Rule provides that when the duties of a position are covered by work of two or more classifications, such as Groups 1 and 2, the classification of such a position shall be determined by the preponderance of work assigned to that position. Organization did not avail itself of its opportunity to secure a reclassification of the position when it believed that the occupant was performing predominantly Group 1 duties. Although we do not presume to say that Organization was restricted to seek this remedy, it might have served as an effective avenue for determining which duties were predominant, and thus if there was a basis for reclassification. In the absence of convincing proof that Mr. Kenney performed clerical duties predominantly or Group 1, we cannot conclude that Carrier violated the 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 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 of the parties 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 28th day of September, 1964.