

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Francis M. Reagan, 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-4812) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, when it required and permitted Agent Herman Williams, at Columbus, Indiana, Southwestern Region, to perform clerical work accruing to clerks covered by the Scope of the Clerks' Rules Agreement.

(b) The Claimant, R. A. Jewell, who was the incumbent of a regular clerical position, F-65-F, at Columbus, Indiana, should be allowed eight hours pay a day, as a penalty, for November 1, 1957, and all subsequent dates until the violation is corrected. Amount due the Claimant to be ascertained jointly by the parties at the time of settlement. (Docket 574)

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 in this case, Mr. R. A. Jewell, was the incumbent of regular clerical position Symbol F-65-F, at Columbus, Indiana, Southwestern Region.

the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules and working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto 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 Agent at Columbus Freight Station performs no work accruing exclusively to clerical employees, that no provisions of the Rules Agreement were violated, 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: Claimant R. A. Jewell contends that Carrier violated the Scope Rule of the Clerks' Agreement of August 1, 1953.

" . . . Group 1—Clerks as defined in the following paragraph:

"Clerk—an employee who regularly devotes not less than four hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements, and similar work, and to the operation of office mechanical equipment and devices, except as provided in Rule 3-C-2 . . ."

when it required and permitted Agent Herman Williams of Columbus, Indiana to perform clerical work allegedly accruing to clerks covered by the Scope of the Clerks' Rules Agreement.

Carrier had abolished Clerical position F-57-F and assigned six (6) hours of its duties to Clerical position F-65-F and two (2) hours to Clerical position B-131-G.

Contention is made Clerical position F-65-F had a surplus of work and that Agent Williams was improperly required to absorb some of this work to the extent he exceeded four hours of clerical work.

The Scope Rule of the Clerks' Agreement has been determined by this Board on numerous occasions to be general in nature listing positions rather than work to be performed. Whether work is covered by the Agreement or not is governed by past practice, tradition, and custom. Conform 8331 (Johnson) and others.

The record of the case discloses that the Clerical work of Agent Williams varied from 3½ to 4½ hours—one to 1½ hours of this time being spent in assisting Clerical employees in the performance of duties with which they were unfamiliar.

The joint investigation of the parties disclosed the following answers to inquiries directed to Agent Williams about his Clerical work:

"Q. Has the above mentioned work ever been assigned to any Clerical position at Columbus, Indiana?

"A. I have always done this work. (Mr. Williams) even before abolishment of position F-57-F.

"Q. Mr. Williams have you been required to perform any additional clerical work since position F-57-F was abolished?

"A. No."

These answers have not been controverted.

Testing the facts of this case by the rule of Award 8331 and others the clerical work performed by Agent Williams were those duties which by past practice, custom, and tradition had been always performed by him as necessary and incident to his assignment as Agent and not by a person covered by the Scope Rule of the Clerk's Agreement.

Accordingly Agent Williams Clerical work is not covered by the Agreement.

Awards 3587 and others are not in point as they deal with work originally covered by the Scope Rule of the Agreement and reassigned by the Carrier to persons not covered by the Agreement. The instant work has never been performed by a person covered by the Scope Rule of the Clerks' Agreement. (Emphasis ours.)

Rule 3-C-2 of the Agreement has not been violated. Clerical position F-57-F was abolished. Its work was assigned upon abolition to clerical positions F-65-F and B-131-G. Conform Awards 12108 (Seff) and 12420 (Coburn).

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 Employee 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of February, 1965.