

Award No. 13454
Docket No. CL-13300

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, 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-5128) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule and Rule 2-A-1(a), when it assigned certain specified clerical work such as timekeeping, handling vacation requests and assignments, advertising bulletins, employe placements, and, the handling of time claims and correspondence in connection therewith, to Printer Operators and others not covered by the Clerical Rules Agreement, in U. D. Office, Harrisburg, Pennsylvania, Philadelphia Region, and failed to establish a clerical position to perform this work.

(b) Claimant James E. Karstetter, should be allowed eight hours' pay a day commencing October 1, 1959, and continuing until the violation is corrected and settlement of this claim is effected.
[Docket 899]

EMPLOYES' 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 (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 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 Wire Chief and Printer Operators assisting the Wire Chief at U. D. was not work assigned nor reserved exclusively to clerical employees by the Clerks' Rules Agreement or otherwise, and that its performance by said non clerical employees 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: Carrier's objection to the assumption of jurisdiction by this Board because of the absence of all notices required by Railway Labor Act, Section 3, First (j), has been mooted since the required notices were given.

Carrier argues that this Board is barred from rendering a decision on the merits of the instant dispute because of Organization's failure to advance the same issue contained initially in System Docket 263 within the time limit set forth in Rule 7-B-1 (i). Rule 7-B-1 (i) says:

"All claims or grievances involved in a decision by the Manager of Labor Relations shall be barred unless within one year from the date of said officer's decision proceedings are instituted by the General Chairman before the Third Division of the National Railroad Adjustment Board."

There is much argument in the Submissions and Rebuttals of both parties as to whether the instant claim or the issues in it are the same, similar or different from those involved in System Docket 263. However, whether they are as same or similar as identical or fraternal twins or as different as a younger child of the same parents is from an older child, we find from facts in the record that application of Rule 7-B-1 (i) does not bar us from considering and ruling on the instant claim on its merits.

The record shows that the instant claim was processed through the steps set forth in Rule 7-B-1 (a) through (h) between January 6, 1960 and November 4, 1960; at no time during this period and, in fact, not until June 11, 1962, the date of Carrier's Ex Parte Submission, did Carrier assert that consideration of the claim on its merits was barred by Rule 7-B-1 (i). On the other hand, the Carrier and the Organization twice came to agreements, confirmed in letters from the Manager to the General Chairman, extending the time

under Rule 7-B-1 (i) for the Organization to progress the instant claim (without regard to whether it was the same issue or claim as that in System Docket 263). Thus, we find that the procedural defect claimed by Carrier as a bar to our hearing this case on its merits was not only waived by non-timely assertion, but also that Carrier affirmatively and in writing agreed to extensions of time under the rule. Organization brought the case here within the time allowed by those extensions; we will consider the case on its merits.

Since this Board has found repeatedly that the Scope Rule in this Agreement is general in nature, the Organization, in order to establish its claim as valid, must first establish by evidence of custom and practice that the involved clerical work is intended by the Scope Rule to be reserved exclusively to it. This it has failed to do.

Organization argues that by bulletining a position whose duties would have been to perform the involved work, Carrier placed the involved work under the Scope Rule. We again affirm our position rejecting this contention as we did in Award No. 12434 where we cited Awards Nos. 11923, 1315, 7166 and 12177 to the same effect. It is conceded that the work involved, albeit in lesser quantities, was always performed at this location by employees not covered by the Clerks' Agreement, and that no clerical position has ever been assigned to the location. Even if four or more hours per day of the involved work was required, our conclusion would be the same: The involved work may properly be performed by employees other than Clerks.

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 8th day of April 1965.