

Award No. 13623
Docket No. CL-13477

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ross Hutchins, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**RICHMOND, FREDERICKSBURG AND POTOMAC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of System Committee of the Brotherhood (GL-5206) that:

(1) The Carrier violated rules of the currently effective clerical agreement dated September 1, 1951, when on October 20, 21, 27 and 28, 1960, caused Clerk E. L. Bryant to suspend work on his regular assignment of Lead Northbound Classification Clerk to assist the Lead Southbound Classification Clerk.

(2) That the Carrier shall now be required to reimburse Lead Northbound Classification Clerk E. L. Bryant for a day's pay at the Lead Classification Clerk's rates of pay for each of these days October 20, 21, 27 and 28, 1960.

EMPLOYEES' STATEMENT OF FACTS: On the above days the Carrier required E. L. Bryant, Lead Northbound Classification Clerk, to suspend work on his regular assignment to assist the Southbound Lead Classification Clerk.

Potomac Yard is a freight classification yard owned and operated by the Richmond, Fredericksburg and Potomac Railroad Company, located just south of Pomomac River across from Washington, D. C. Potomac Yard was established in 1906 with four sub yards known as Southbound receiving yard, Southbound Classification Yard, Northbound receiving yard and Northbound Classification Yard. All freight trains coming from the north are received in the Southbound receiving yard, and all trains coming from the south are received in the northbound receiving yard. Potomac Yard is the connection point for the B&O and PRR from the north and the Southern, C&O and RF&P from the South. When the trains arrive in the receiving yards the waybills are turned over to the Lead Classification Clerk to classify the cars into the tracks in the classifying yard where they are made up into trains going either north or south. Prior to 1949 the Classification Clerks were located on each hump, the Southbound Classification Clerks were located on each hump, the Southbound Classification clerk was located on the Southbound hump

CONCLUSION

Two lead classification clerks are assigned on each shift at Potomac Yard. Both of these employes are of the same craft and class, hold seniority on the same roster, and are paid the same rate. They assist each other in performing classification work, as conditions permit. Neither custom and practice nor any rule of the Agreement requires the Carrier to hold an employe from a preceding shift on overtime, or to call an additional employe from the extra list to perform work which can be performed by the two regularly assigned lead classification clerks within the assigned hours of their assignment. Any doubt on this point was resolved by Award 7783, and the memorandum of understanding of November 6, 1957, negotiated subsequent thereto.

In handling this dispute on the property, the Employes failed to prove that any provision of the Agreement prohibited Claimant from "lending a hand" to the other lead classification clerk, and most assuredly neither he, nor any other employe, was adversely affected by the small amount of incidental work involved in this dispute.

Obviously, the Carrier would never negotiate a rule which would restrict a lead classification clerk to performing only northward or southward work. As a practical matter, there is such a fluctuation in the volume of work, it would be virtually impossible to give each lead classification clerk exactly eight hours of either southward or northward classification work. Extra sections, or trains running late on schedule, often result in peak periods on one hump when work on the other hump is light. Under such circumstances, the Carrier must have flexibility in assigning clerical work from the busy desk to the clerk on the desk who is not busy. All lead classification clerks are qualified to "lend a hand" to each other, even though they all are not fully qualified on both desks. They are, and always have been, expected to assist each other in meeting demands of the service.

No overtime was worked in this case; neither was any overtime absorbed; nor was anyone deprived of any overtime to which they were entitled, especially Claimant, who worked the assigned hours of his position in performing work of a class and craft that was properly assigned to him as part of his regular assignment.

There was no violation of the Agreement in this claim and it should be accordingly denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Two Lead Classification Clerks were employed on each shift. One worked the northbound desk and one the southbound desk. On the 13th, 20th, 21st, 27th and 28th of October, 1960, the clerk on the northbound desk assisted the clerk on the southbound desk during regular working hours. This claim is for an additional day's pay for each of the stated days on the basis that the clerk on the northbound desk was required to suspend work on his regular position to absorb overtime in violation of Rule 9 (f). Rule 9 (f) is as follows:

"(f) Employes will not be required or permitted to suspend work during regular hours to absorb overtime."

Award 7783 (Lynch) involved a claim involving the same organization, the same carrier, and the same yard as this docket. In that action the organization

contended that the Carrier required a clerk to suspend work on his regular assigned position to assist a classification clerk. The organization based its claim on the terms of Rule 9 (f), quoted above. This Board held in Award 7783 (Lynch):

"In the instant case we must hold that Carrier exercised its Management prerogatives in arranging its work to meet the service requirements at this particular installation (Award 5331); that Claimants worked the assigned hours of their positions, performing work within their craft or class and were paid the highest rate applicable (Award 7082); that Organization has failed to prove that the "accumulation of work" involved could have been subsequently performed at overtime without injury to the service Carrier is required to maintain; that Claimants here were not "injured" (Awards 7082, 7642); that Carrier's action in assigning duties to Claimants Mills and Der Tativasion on the shift in question was not for the purpose of "absorbing overtime" and that Organization has failed to prove that Carrier's action was violative of the applicable agreement."

In this action, the employees contend that Award 7783 (Lynch) is not applicable to this action. The employees say:

"In Award 7783, the employees reported on their regular assigned position and worked for some time on their regular position and were taken off for an hour or so and then returned to their regular position to complete the day, and the Board ruled that this was lend the hand. These cases are not the same. In this case Bryant was not allowed to go to work on his regular position, but at the starting time of the shift he (Bryant) was required to leave the work on his regular position of Lead Classification Clerk Northbound to assist on work on the Lead Classification Clerk's Southbound desk that was left over from another shift. Therefore, Award 7783 is not applicable in this case.

The difference the employees note is that in Award 7783 (Lynch) the Claimant worked on his regular position before and after he "suspended" work and in this docket the Claimant "suspended" work at the beginning of his regular hours. The employees do not point out how this difference is significant, and we hold that it is not significant.

We, therefore, have before us now the same parties, the same Agreement, the same rule of that Agreement, and the same type of alleged violation.

Of the dockets that come before this Board, there are at least three types in which previous awards play a predominant role.

First, there are those dockets in which the Claimant refiles a claim previously litigated. In this event the doctrine of res judicata applies and is a bar to the refiled claim.

The second is where a claim is filed involving the same parties as a previous claim and some or all of the same issues, but a different cause of action. Estoppel by judgment applies to this type of action and precludes parties from contending to the contrary on any point or matter of fact, which has once been put in issue by them or those to whom they are privy, and as an ultimate fact or conclusion of law has been found against them.

The third relates to claims filed involving strangers to a previous award which adjudicates the issues involved in the docket being considered. The principle to be applied in these cases is stare decisis.

Non jurisdictional error of a previous award can only be a consideration in the third class of dockets. This Board has no jurisdiction to try the same issue of fact or law between the same parties twice.

The principles set out herein are not only the law in the nations which derive their jurisprudence from England, but are also the law throughout the entire world. The principles are elementary, for, indeed, if res judicata, estoppel by judgment and stare decisis are not the law, there is no law, there is no substance to justice; there is only procedure and argument. See the text books on Judgments, the Judgment sections of American Jurisprudence and Corpus Juris Secundum.

This docket is clearly one of those in which estoppel by judgment is applicable, and in this particular docket no new controlling issues of fact or conclusions of law different from Award 7783 (Lynch) are presented. Accordingly, this Claim will 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 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 28th day of May 1965.