

Award No. 13642
Docket No. CL-13948

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, 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-5293) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, when Yard Masters were used to perform clerical work at Orrville, Ohio, Lake Region, under the jurisdiction of the Assistant Train Master.

(b) That Clerk R. L. Miller, should be allowed eight hours pay a day for May 22, 1960, and all subsequent dates until the violation is corrected. (Docket 1083)

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 the present case, Mr. R. L. Miller, holds a position of Extra Clerk under the jurisdiction of the Assistant Train Master at Canton, Ohio, Lake Region. He has a seniority date of October 30, 1956, on the seniority roster of the Lake Region in Group 1. Canton and Orrville, Ohio are approximately twenty-two miles apart in the same seniority district.

Section 3 (p) of the Railway Labor Act, dealing with suits in the Federal Courts for the enforcement of those awards of your Honorable Board which contain a monetary award, provides, in part:

" . . . 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 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 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 Yardmaster at Orrville Yard performs no work in violation of the clerical Scope Rule and that the Employees have produced no valid evidence in support of their claim.

Therefore, the Carrier respectfully requests your Honorable Board to deny the Employees' claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: By letter dated August 19, 1960, clerical employee R. L. Miller presented the subject claim based on the contention that the Yardmaster at Orrville Yard (Orrville, Ohio) has been performing clerical duties which are reserved to the Clerks' Agreement. There are no clerical positions assigned at Orrville Yard, the entire yard operation being

handled by the single Yardmaster who is on duty from 6:45 A. M. to 2:45 P. M., Monday through Friday. One clerical position is assigned to the Freight Station at Orrville, however. The incumbent of this position performs clerical work for the Freight Agent and Supervisor of Track, but performs no work at Orrville Yard. Claimant Miller holds a position as Extra Clerk under the jurisdiction of the Assistant Trainmaster at Canton, Ohio. Canton and Orrville are approximately 22 miles apart in the same seniority district.

The parties agree that Agreement Rule 3-C-2, which deals with the assignment of work following the abolition of a clerical position, is not involved in this case. Thus this dispute is concerned solely with whether Carrier has violated the Scope Rule of the Clerks' Agreement by requiring or permitting the Yardmaster to do clerical work.

The parties further agree that clerical work is performed by the Yardmaster but they differ on the amount of such work which he performs. The Organization contends he spends practically a full 8 hours each day on clerical duties. The Carrier responds that he performs approximately $2\frac{3}{4}$ to 3 hours of work daily in checking tracks, stamping waybills and other tasks which might be assigned to a clerical position if such were in existence at Orrville Yard. Carrier also contends that the clerical tasks performed by the Yardmaster are incidental to his primary duties as a Yardmaster.

We find no valid basis for sustaining this claim. There are other locations on Carrier's property where the yard operation is handled solely by a Yardmaster, who performs clerical work incident to his primary duties. This is the situation at Orrville Yard. The Scope Rule of the Clerks' Agreement does not require that these clerical duties be separated from the Yardmaster and delegated to a clerical employe under such circumstances.

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 Carrier did not violate the Agreement.

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.