

Award No. 14682
Docket No. CL-15520

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5743) that:

1. Carrier violated, and continues to violate, the Clerks' Rules Agreement at Milwaukee, Wisconsin when it established a position in the Superintendent's Office to perform work comparable to that of a Car Distributor and unilaterally assigned such work to an employee outside the scope and application of that Agreement.

2. Carrier shall now be required to compensate furloughed employee Julia Johnson for eight (8) hours at the pro rata rate established for this position for each work day subsequent to March 1, 1964 until the violation is corrected and the position is bulletined and assigned in line with the provisions of the Clerks' Rules Agreement.

Reparation due the employee to be determined by joint check of Carrier payrolls and/or other records.

EMPLOYEES' STATEMENT OF FACTS: On March 1, 1964 Carrier established a position in the Superintendent's Office at Milwaukee, Wisconsin of Special Representative to the Superintendent and assigned thereto the clerical and other incidental duties in connection with car distribution normally performed by clerks. The principal duty of this position is compilation of a form Car Control Report CCR3 and car distributing.

This position was not bulletined to employees in Seniority District No. 36, wherein the work occurs and is being performed. A telegrapher by the name of Don Lehr, who is an employee outside the scope and application of the Clerks' Agreement was unilaterally assigned thereto with an arbitrary title of Special Representative to the Superintendent.

functions thereof do not in any way relate to the definition of a clerk nor does the work of such Official positions fall within the scope of the Clerks' Agreement or any other labor contract in effect on this property.

Were the positions of Special Representative to the Superintendent not in existence the work of such positions would be performed by the Superintendent or some other Division Officer designated by the Superintendent.

There is attached hereto as Carrier's Exhibit A copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of September 9, 1964.

(Exhibits not reproduced.)

OPINION OF BOARD: On March 1, 1964, Carrier established a managerial position in the Superintendent's Office at Milwaukee, Wisconsin, of Special Representative to the Superintendent. Clerks aver that Carrier assigned to the position duties in connection with car distribution reserved by the Agreement to clerks. Carrier's reply is a general denial.

The record does not reveal the particular work or the amount of it allegedly wrongfully taken from clerks. Clerks' Submission consist only of statements of ultimate facts not proven by substantial evidence of probative value. The burden of proof is Clerks. It failed to satisfy the burden. We, therefore, must deny the Claim.

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 23, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Claim fails for lack of proof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1966.