

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

John H. Dorsey, Referee

## PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES****THE LONG ISLAND RAIL ROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6288) that:

1. The Carrier violated the established practice, understanding and provisions of the Clerks' Agreement, particularly, Rules 2-A-1, 4-F-1, 9-A-1, 9-A-2, among others, when it assigned and required Ushers on the following positions at Jamaica Station 12 Midnight, 6:00 A. M., 6:15 A. M., 6:30 A. M., 7:30 A. M., 3:00 P. M., 3:30 P. M., 4:30 P. M.—Eastbound, 4:30 P. M.—Westbound, to perform higher rated work of Assistant Station Masters.

2. The Carrier shall pay all Ushers on the above specified positions, names of which are shown on Attachment "A" and their successor or successors at the rate of \$33.80 each per day, having been required to perform the duties of Assistant Station Masters which is a higher quality of work and higher rated positions, effective September 17, 1966 and each day thereafter until the violations are corrected.

**EMPLOYEES' STATEMENT OF FACTS:** There is in effect a Rules Agreement effective January 1, 1965, covering clerical, other office, station and storehouse employees, between this Carrier and this Brotherhood. The Rules Agreements may be considered a part of this Statement of Facts. Various Rules and Memorandums therefore may be referred to from time to time without quoting in full.

This dispute involves the Carrier arbitrarily assigning the Ushers to perform higher rated work of Assistant Station Masters, of keeping reports and listings of all departures and arrivals of trains at Jamaica Station on train delay sheets. (See Employees' Exhibit A.) Ushers when assigned to perform this work as Assistant Station Masters are paid the higher rate of pay of \$33.80 per day. However, on September 17, 1966 the Carrier unilaterally put out the following notice without consulting or advising this Brotherhood, and refused to pay the Ushers the higher rate of pay.

The majority of the Carrier's passenger trains pass through Jamaica Terminal daily and also on Saturdays, Sundays and Holidays. In order to maintain a proper time schedule for this operation our employes in the Telegrapher Group, Movement Office, Assistant Station Masters and Ushers keep a Jamaica Station Delay Sheet for each day of the week showing the trains that pass through Jamaica Station. A copy of the Jamaica Station Delay Sheet is attached hereto and made a part hereof, marked Carrier's Exhibit 1.

The employes of the Telegrapher Group are represented by the Transportation-Communication Employees Union, the Ushers are represented by the Petitioner, whereas the employes of the Movement Office and the Assistant Station Masters are non-represented.

The instant dispute arose when the following notice was posted by the Station Master on September 17, 1966:

"Assistant and Extra Assistant Station Masters:

Effective 12:01 A.M., Saturday, September 17, 1966, you will distribute and instruct Ushers (in P.A. Booths) on each tour of duty to keep track of all trains East and West in accordance with attached sample.

/s/ G. P. Kief  
Station Master"

On October 10, 1966, the Local Chairman filed claim with the Passenger Train Master protesting the use of Ushers in connection with the work in dispute. A copy of claim is attached hereto and made a part hereof, marked Carrier's Exhibit A.

The Passenger Train Master denied this claim on October 20, 1966, and, in accordance with the provisions of Memorandum of Understanding No. 4, he arranged to meet with the Local Chairman in an effort to formulate a Joint Statement of Agreed Upon Facts. A copy of the denial is attached hereto and made a part hereof, marked Carrier's Exhibit B.

The Local Chairman and the Carrier's representative were unable to agree upon a joint statement of facts and separate statements were submitted to the General Chairman and the Director of Personnel. Copies of these statements are attached hereto and made a part hereof, marked Carrier's Exhibit C-1 and Carrier's Exhibit C-2.

The claim was listed by the General Chairman on November 11, 1966, for discussion with the Director of Personnel. A copy of this letter is attached hereto and made a part hereof, marked Carrier's Exhibit D.

The claim was discussed by the Director of Personnel and the General Chairman at meeting on November 28, 1966 and denied by the Director of Personnel on December 8, 1966. A copy of this denial is attached hereto and made a part hereof, marked Carrier's Exhibit E.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Carrier promulgated the following notice under date of September 16, 1966:

**"Assistant and Extra Assistant Station Masters:**

Effective 12:01 A.M., Saturday, September 17th, 1966 you will distribute and instruct ushers (in P. A. Booths) on each tour of duty to keep track of all trains East and West in accordance with attached sample.

/s/ G. P. Kief  
S. M., 9/17/66

Sheets for use in top of our clothes locker. Completed sheets are to be placed in third drawer down, in filing cabinet, so marked.

This will allow assistants more time to get around station property."

The Ushers are covered by the Clerks' Agreement. Assistant and Extra Assistant Station Masters are not represented by any organization.

Clerks filed claim alleging that Carrier arbitrarily assigned Ushers to perform the higher rated work of Assistant Station Masters of keeping reports and listings of all departures and arrivals of trains at Jamaica Station on train delay sheets; and, Carrier by its failure and refusal to pay the higher rate to Ushers performing such work violated Clerks' Agreement, particularly: Rule 4-F-1 which reads:

"4-F-1. Employees temporarily or permanently assigned to a higher rated position shall receive the established higher position rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced.

A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee."

Further, Clerks aver that historically Ushers when assigned to Assistant or Extra Assistant Station Master positions have been paid the higher rate.

The Carrier's defenses are: (1) the work involved has not been historically performed, exclusively, by employees covered by Clerks' Agreement; (2) employees of other crafts and classes other than Assistant and Extra Station Masters report arrival and departure of trains on the system; (3) for some time prior to 10 years before the date of the claim Ushers had reported late trains without receiving the higher rate of Assistant or Extra Station Masters; and, (4) Clerks failed to prove a violation of its Agreement.

Rule 4-F-1 of Clerks' Agreement requires Carrier to pay clerks temporarily or permanently assigned to higher rated positions, whether or not the work involved is within the Scope of Clerks' Agreement, the higher rate. However, the Rule contemplates the fulfillment of the duties and responsibilities of the position during the time occupied. The record in this case does not disclose how much of Ushers daily time, after the September 16, 1966 notice, was devoted to keeping reports and listings of departures and arrivals on train delay sheets; nor, does it show how much time per day, prior to the notice,

Assistant Extra Station Masters devoted to this work; or the other duties and responsibilities of those positions. We, consequently, are unable to determine from the record whether Claimants were contractually entitled to receive the higher rate. We will dismiss the Claim for failure of proof.

**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 Claim must be dismissed for failure of proof.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August 1968.