

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19372
Docket Number CL-17796

William M. Edgett, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Boston and Maine Corporation

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6440)
that:

(1) Carrier violated the rules of the Clerks' Agreement when shortly after Award 282 it instituted and gradually expanded by unilateral actions the establishment of major yard activities at Ayer, Massachusetts, and required its "train directors" to perform yard clerks work, said yard clerks work having been performed exclusively by the clerical craft and class at the locations from which it was removed prior to Award 282.

(2) Carrier shall now be required, to return the work to employees in the clerical craft and class and until rectified, beginning 60 days retroactively from February 9, 1967 to compensate the following at punitive rates, including their successors, subsequent wage increases, holiday pay, vacation credits and other fringes, insurance and incidental benefits that would normally accrue to them if the work was correctly assigned to the clerical craft and class:-

<u>Name</u>	<u>Days</u>	<u>Hours</u>	<u>Rate of pay (pro rata)</u>
Malcolm Fohy	Sat. & Sun.	7 am to 3 pm	2.966 per hour
	Thurs.	3 pm to 11 pm	2.966 per hour
Helen Kershaw	Monday	7 am to 3 pm	2.966 per hour
M. Lofquist	Tues. & Wed.	7 am to 3 pm	2.966 per hour
	Thurs. & Fri.	7 am to 3 pm	2.966 per hour
WM. Mahan	Fri. & Sat.	3 pm to 11 pm	3.003 per hour
	Sunday	3 pm to 11 pm	3.003 per hour
Leo A. Lemay	Mon. Tues. & Wed.	3 pm to 11 pm	2.966 per hour
	Tues. & Wed	11 pm to 7 am	2.966 per hour
R. J. Babineau	Fri. & Sat.	11 pm to 7 am	3.14737 " "
	Sunday	11 pm to 7 am	3.14737 " "
George Goguen	Mon. & Thurs.	11 pm to 7 am	2.966 " "
	Friday	11 pm to 7 am	2.966 " "

OPINION OF BOARD: The claim alleges that the Carrier violated the Clerks' Agreement in its operations at Ayer, Massachusetts by requiring train directors, not covered by the Agreement, to perform yard clerks' work.

It is well settled that in proceedings of this nature the burden is on the Petitioner to prove, with probative evidence, all elements of its claim that the Carrier does not accept. It is also well settled that mere assertions are not proof.

From our review of the record, we find no evidence by the Petitioner of any work being performed by telegraphers, or train directors, at Ayer that has not been performed by them for years. There is no evidence of any clerical position being abolished; nor is there any evidence of any work being transferred. In short, the Petitioner has failed to meet the burden of proof required of it, and the claim will be denied for this reason.

In its submission the Petitioner alludes to the February 7, 1965 Job Stabilization Agreement. If a dispute exists involving the interpretation or application of that Agreement, the forum for deciding it is the Disputes Committee established under that Agreement.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. G. Killum
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1972.