

Award No. 2469
Docket No. CL-2480

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

St. Clair Smith, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Caller A. W. Zander and Clerk-Caller John Taylor be paid one day's pay at time and one-half their respective rates for each rest day subsequent to December 4, 1942, they were not notified, called or assigned resulting from the use of an employe from another class or craft on work in the Mechanical Department covered by the Agreement between the parties.

EMPLOYES' STATEMENT OF FACTS: The provisions of the scope Rule 1 of the Agreement, effective October 1, 1942, pertinent to this dispute reads as follows:

"RULE 1 EMPLOYES AFFECTED These rules shall govern the hours of service and working conditions of the following class of employes:

* * * * *

"MECHANICAL

"Seniority Class One—Clerical Workers.

"Seniority Class Two—Engine Crew Callers, Messengers.

* * * * *

"(B) All the rules of this Agreement, excepting specifically Rules 5 to 12, both inclusive, Rules 14 and 15, and Rules 28 to 43, both inclusive, shall apply to the following positions and the occupants thereof:

* * * * *

"Chief ClerkMechanical Department.

"Engine DispatchersMechanical Department."

* * * * *

Employes and positions covered by Rule 1, Mechanical Department, rates of pay, hours of service, days of rest and seniority as of the date of this submission are as follows:

2052. Here, the work performed on the claimants' days of rest was performed by an employe covered by the scope of the Clerks' Agreement. To this work he was regularly assigned by bulletin.

OPINION OF BOARD: The basic violation charged is that the Carrier used a worker of another craft or class to perform work covered by the working agreement. It used a roundhouse laborer on two days each week on the position of Relief Clerk-Messenger in the Mechanical Department. On the days in question the Relief Clerk-Messenger, who was relieved by the roundhouse laborer, was used pursuant to regular assignment to fill the respective rest days of claimants who held six day assignments on seven days positions. Claimants assert that they were available on their respective rest days to perform the work of the Relief Clerk-Messenger, and make claim for each day the laborer was in fact used.

In denying the claim the Carrier assumed the position that, because it was unable to obtain an additional extra or relief clerk, it acted within its rights in using the laborer and in any event, it having fulfilled its six day guaranty to Claimants, they have no claim for the additional work.

It is settled that a carrier violates the working agreement when it uses workers of another class or craft to perform work within its scope at a time when workers covered by the agreement are available. Awards 1646, 2052 and 2282. And see United States Railroad Labor Board Decisions Nos. 3341 and 3733.

If the contention that the fulfillment of its six day guaranty does not completely fulfill the Carrier's obligation to supply an available worker with work has not previously been ruled against the Carrier by Award 2341, it has been ruled against this Carrier today in a proceeding in which this Carrier and one of the present parties were opposed. See Award 2467 (Docket CL-2478). We do not here reproduce what we there said. The contention is rejected. The penalty for the violation of the working agreement must be paid. Awards 1646 and 2282.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Carrier violated the working Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of February, 1944.