

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Clerk L. M. Rau, cashier, Wabash, Indiana, be used on Sundays and legal holidays to perform clerical service required at Wabash passenger station, and which is performed by him during his daily hours of assignment 8:15 A. M. to 5:15 P. M., Monday to Saturday, inclusive.

(b) Clerk L. M. Rau to be compensated under the overtime and call rule of the Schedule for Clerks, for two calls of two hours each, or four hours at punitive rate of his assignment on Sundays, July 19, 26, 1942; August 2, 1942, and subsequent Sundays and legal holidays on which he was not used to perform necessary clerical work at the passenger station, Wabash, Indiana.

EMPLOYEES' STATEMENT OF FACTS: On or about June 16, 1942, telegraph operators assigned at passenger station, Wabash, Indiana, were moved to a new location at Hartman, Indiana.

A clerical position with title designated as ticket clerk-baggage man, was bulletined on June 16, 1942, with hours of assignment 8:00 P. M. to 5:00 A. M., seven days per week.

Duties of selling tickets and meeting passenger trains Nos. 1 and 4 during the day, were assigned to Clerk L. M. Rau, employed at Wabash freight station as cashier, hours of assignment 8:15 A. M. to 5:15 P. M., six days per week, Monday to Saturday, inclusive.

In support of the above statement we show a true copy of letter written Mr. H. G. Pace, Superintendent Montpelier Division, by Mr. J. L. Brown, Agent, under date of June 24, 1942. Employees' Exhibit "A."

Clerk L. M. Rau was required to perform the clerical duties at the passenger station on Sunday, June 28; Saturday, July 4; Sunday, July 5, and Sunday, July 12, 1942; and compensated on basis of two calls of two hours each at punitive rate, in accordance with Rule 4, Overtime and Calls, Schedule for Clerks. Passenger train No. 1 scheduled to arrive Wabash, Indiana, 11:18 A. M., Train No. 4 scheduled to arrive 4:45 P. M.

On Sundays and legal holidays subsequent to July 12, 1942, Clerk Rau was not used; Mr. Jay L. Brown, Agent, being instructed by J. W. Patterson, Trainmaster at Peru, to perform clerical work required in connection with

granting of new rules is a power which the Board does not possess under the law by which it was created, this case should be dismissed for lack of jurisdiction.

OPINION OF BOARD: Dockets CL-2374, CL-2379, CL-2400, CL-2425, MW-2367, CL-2526, CL-2527 and CL-2544 were initially deadlocked on the issue of giving notice to persons or organizations, other than parties to the disputes, whose interests may be affected by awards on the merits. The Carrier Members take the position that binding and conclusive awards can be rendered only after notice is given to all whose rights may be involved.

The question raised is not a new one to this Division. It has been exhaustively considered in at least five cases and adverted to in another. In two cases only has it been held that notice to other than parties to the dispute is a prerequisite to the rendition of a valid and binding award as between the parties. These are Awards Nos. 1193 and 1400. The first was a dispute involving seniority rights. Before hearing the dispute on the merits, the Board, sitting with a Referee, ordered notice to be given to the person whose seniority rights were challenged by the claim. In Award 1400 the claim was denied because parties whose rights would have been affected by its allowance had not been given notice. In the others—Awards Nos. 371, 844, 902 and 2253—decision on the merits was reached without notice to parties other than those to the dispute. In each of these cases, as in Awards Nos. 1193 and 1400, it was recognized that the dispute might involve rights of parties other than those of record. If there were such parties, the award, of course, would not be binding on them. But it was held that this did not affect the jurisdiction of the Board to entertain the dispute nor impair its power to render a binding and conclusive award as between the parties to it. This for the simple reason that neither the Statute (Section 3-j, The Railway Labor Act) nor the Rules of Procedure established by the Board require notice to parties other than those to the dispute.

Of course, the Carrier Members challenge this proposition. But it was so effectively maintained and established by analysis of the Statute in Awards Nos. 844, 902 and 2253 that it would seem no longer debatable. Indeed, as we read the Opinions in Awards Nos. 1193 and 1400, no attempt was made to refute the proposition that the Statute and Rules of Procedure set up by the Board require notice only to the parties to the dispute. In Award 1400 the Referee's remarks amounted to nothing more than advice to the Board with respect to Rules of Procedure. He undoubtedly acted within his power as Referee when he joined the Carrier Members in denial of the claim. From the decision, however, it is very apparent that he was aware that, as Referee, he could not trench upon the rule-making power vested in the Board. Section 3 (u), The Railway Labor Act.

In Award No. 1193, the Referee, in joining the Carrier Members in requiring notice to be given to a party other than those to the dispute, did trench upon the rule-making power of the Board. Not only that, he exceeded the power conferred upon Referees by the Act, which is, "to sit with the Board as a member thereof and make an award."

However desirable a Referee may think notice to parties, other than those to the dispute, would be, he cannot order it because the Statute and Rules of the Board do not require it. The limitation of the power of Referees is epitomized in the Memorandum of the Referee attached to Award No. 902, reading:

"Since, in my opinion, the Board has jurisdiction over the parties and power to make an award which will bind them, the question is not whether the Board may lawfully proceed to dispose of the case, but whether it ought to do so. While the rules of the Board provide for notice only to the parties, the Board could, if it wished, provide for notice to other persons who might be affected by awards. But whether

the Board should do so or not is a question beyond the province of a referee. The Amended Railway Labor Act provides (U. S. C. A. Title 45, Sec. 153, First) that the Board shall 'adopt such rules as it deems necessary to control proceedings before the respective divisions * * *, while a referee's function is 'to sit with the division as a member thereof and make an award.'"

We conclude that it is necessary to give notice of hearing only to the parties to the dispute.

On the merits, this dispute presents a persistent subject of controversy between the Brotherhood and the carrier. The gist of the issue is whether the carrier may, in the interest of economy in operation, assign clerical work to employees who hold no seniority rights under the Clerks' agreements. We think, with the exception of disputes involving clerical work assigned to Telegrapher-Clerks, the awards of this division have firmly established the principle that all clerical work falls within the scope rule of Clerks' agreements unless it is work incidental to a position not covered by the agreement. We think the facts in this record do not present the issue with respect to the assignment of clerical work to Telegrapher-Clerks. We shall, therefore, not discuss that question.

The facts giving rise to the claim are not in dispute. Prior to June 25, 1942, clerical work at the Wabash passenger station was performed by telegrapher-clerks who were not covered by the Clerks' Agreement. On that date telegraphic service was discontinued and the telegrapher-clerks were transferred to Hartman, one and one-half miles west of Wabash. At the same time the carrier created a seven-day clerical position at the passenger station at Wabash.

On Sunday, June 28th; Saturday, July 4th; Sunday, July 5th; and Sunday, July 12th, 1942, claimant who held a regular six-day clerical position in the freight house at Wabash, was called to meet trains Nos. 1 and 4. On those days he performed the clerical work in connection with the arrival and departure of those trains. Subsequent to July 12th he was not called, the clerical work, in connection with those trains, being assigned to the station agent who is not covered by the Clerks' Agreement.

That the work in controversy falls within the purview of the scope rule of the Clerks' agreement is, it seems to us, not open to argument. That the work is assigned to claimant on week days is conclusive on that issue. And it is equally clear that the work is not incidental to the duties pertaining to the position of Station Agent. The point is made that the station agent is covered by the Telegraphers' agreement. This, we think, is beside the issue. He performed no telegraphic work. See Awards Nos. 615 and 2071. Since the work falls within the scope rule of the Clerks' Agreement and is not incidental to the duties of the position of station agent, the carrier is obligated to call a man covered by the agreement to perform it. The claimant is a proper party to assert the claim. See Award 2044.

The parties are in disagreement as to the amount of time necessarily consumed in handling such work—the organization claiming four hours, the carrier conceding one. We are convinced that the carrier's estimate is a fair approximation of the time necessary to perform the clerical work in connection with the arrival and departure of both trains.

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 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 carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of April, 1944.