

Award No. 2609

Docket No. CL-2662

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

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

THE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, that the Carrier violated the rules of the Clerks Agreement when, effective October 14, 1942, it assigned clerical work to a Machinists Helper employed in the Hornell, New York Roundhouse for an average of two hours or more daily, and

That the Carrier shall now reimburse employee J. J. McInerney on the basis of overtime for all clerical work performed by Machinists Helper Iak during the period October 14, 1942 to May 1, 1943 when it was discontinued.

JOINT STATEMENT OF FACTS: Effective October 14, 1942, to date, Machinist Helper Iak, employed in Hornell Roundhouse, has been used for an average of two hours daily to check work report forms 1404 for repeater reports.

This work consists of reading work reports and transcribing certain information from these reports to a mimeograph form and ledger.

C. E. Smith
Division Chairman

E. Pool
Master Mechanic

Signed March 15, 1943.

EMPLOYEES' ADDITIONAL STATEMENT OF FACTS: Effective October 14, 1942 Mr. Iak, Machinists Helper, was required to perform clerical work consisting of checking the locomotive inspection report forms 1404 for repeater items, and these when noted were recorded on a mimeograph form known as Repeat Item Report, which was attached to original locomotive inspection report form 1404. He was also required to compile a ledger record of the number of repeat items reported. These duties required approximately two hours per day, except that on days following a day when Mr. Iak would be off duty, four hours of his time was so required. Mr. Iak continued to perform this clerical work until May 1, 1943, when the work was discontinued.

POSITION OF EMPLOYEES: There is in effect between the parties an agreement bearing effective date of September 1, 1936 which contain the following rules.

Rule 1 (Scope) reads as follows:

"These rules shall govern the hours of service and working conditions of the following employees of the Erie Railroad System Lines, subject to the exceptions noted below:

"Group 1. Clerks as defined in Rule 2, including baggage agents, foremen, assistant foremen, receiving clerks, delivery clerks, checkers,

seniority was set, and any review of forms 1404 work reports by McInerney during period July 22, 1930 to March 12, 1935 was considered incidental to work as machinist helper.

Machinist Helper R. L. Green and others have also been used to review 1404 reports for repeater items. Green later became an apprentice and completed his apprenticeship and was promoted to machinist July 12, 1941.

In Award 1484 the Third Division, assisted by Referee Paul Richards, denied a claim progressed by the Clerks on Northern Pacific Railway, account alleged clerical work being performed by a carman, time consumed two hours. In this award the Third Division said there was no showing that such work was within the scope of Clerks' Agreement or had previously been performed by Clerks; also that "not all work clerical in character comes within the scope rule of the Clerks schedules of Agreement such as Rule 1 here involved, and to the effect that the division of work between the various Railway Labor Organizations cannot be made with mathematical precision." Reference is made in the award to previous awards 806, 809, 1405 and 1418, and claim was denied.

McInerney was not deprived of overtime work since the records show he was paid considerable overtime during this period.

1. The reviewing of work reports for repeater items is not work assigned exclusively to any clerical position.
2. McInerney was assigned to his regular work and did extra work during the period October 14, 1942 and May 1, 1943 and none of his work was done by Iak.
3. The work performed by Iak, incidental to his regular work, was not work taken from any clerical position within the scope of Rules and Regulations September 1, 1936. This reviewing of work reports, form 1404, to determine repeater items, is done regularly by officers and others who may have occasion to do so.
4. Rule 2 of Rules and Regulations September 1, 1936 defines a clerk as an employe "who regularly devotes four (4) hours or more per day to the compiling, writing, and/or calculating incident to keeping records and accounts, transcribing and writing letters, bills, reports, statements and similar work, and to the operation of office mechanical equipment and devices." There is no classification of work rule. There are few, if any, employes from the President down to the Laborer who do not perform some clerical work in connection with their regularly assigned duties. (See Awards 806 and 1405 by Third Division, assisted by Referee Spencer.)
5. The work here involved is somewhat the same as train conductors or trainmen examining train lists and checking bills, and cannot be classed as exclusive clerical work.

OPINION OF BOARD: Without hereby establishing precedent for application to any other set of facts and circumstances than those presented in this docket, it is held that the assigning as here, daily, for a period of six months, of the job of checking locomotive inspection report Form 1404 in order to identify repeater items of the same nature, as described in the Joint Statement of Facts, represents an assignment of clerical work coming within the scope of the Clerks' Agreement to an employe without the Agreement.

On that basis the claim of J. J. McInerney is sustained, for the time that Machinist Helper Iak devoted to the performance of this work on the days that McInerney was available therefor during the period October 14, 1942, to May 1, 1943, that Iak was thus employed.

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 under the circumstances of this case the claim will be sustained as indicated in Opinion of Board.

AWARD

Claim sustained in accord with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of June, 1944.