

**Award No. 4669**

**Docket No. CL-4718**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Charles S. Connell, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,**

**FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**THE PENNSYLVANIA RAILROAD COMPANY**

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

K. C. Livingston, Restroom Attendant, Wilkes-Barre, Pennsylvania, be compensated at the Crew Dispatcher's rate of pay for all time used to perform duties formerly assigned to Crew Dispatchers at Wilkes-Barre, Pennsylvania, effective January 1, 1947, and until adjusted. (Docket E-399)

**EMPLOYEES' STATEMENT OF FACTS:** This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representatives of the class or craft of employees in which the Claimant holds a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employees, between the Carrier and the Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, and which has also been filed with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimant, K. C. Livingston, is regularly assigned to position of Restroom Attendant, a Group 2 position, at Wilkes-Barre, Pennsylvania, with assigned duties as follows:

"Maintain Restroom in a clean and orderly condition and notify employees when called for duty."

Effective January 1, 1947, he was called upon, almost daily, to act in the capacity of a Crew Dispatcher, performing certain of the work of Crew Dispatcher's position, such as calling crews, making check of track, stamping waybills and interchange work.

A Crew Dispatcher's position is a Group 1 position under the Scope Rule of the Clerks' Rules Agreement, effective May 1, 1942. The Claimant, a Group 2 employee, was assigned to position of Crew Dispatcher approximately one

On the other hand, when a clerical employe is assigned to assist a higher rated position for a period of a few hours, assisting in performing certain items of work assigned to the higher rated position, the rate of the higher position is not allowed. As in the instant case, assisting a higher rated employe due to a temporary increase in the volume of work does not constitute a temporary assignment to such position.

If the contention of the Employees were correct, and the claim in this case allowed, it would mean that anyone who performs any clerical work whatsoever would receive the clerical rate of pay. The Carrier submits that this is not the intent of the applicable Agreement but is directly contrary to Rule 4-E-2, and that the Agreement does not provide that such a principle be established.

Therefore, the contention of the Employees does not lend support to the claim here involved.

It is, therefore, respectfully submitted that the claim in this case should be denied.

**III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.**

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreements between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreement concerning rates of pay, rules, or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

**CONCLUSION:** The Carrier has established that, under the applicable Agreement, the Claimant is not entitled to the compensation which he claims.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The facts in this case are not in dispute and are set forth in the joint statement of agreed upon facts: The question is whether or not the claimant rest room attendant, a group 2 employe, should be compensated at the clerical rate of pay for time devoted to clerical duties even though such duties require less than four hours daily. It is admitted that the claimant devotes a portion of his tour of duty to work usually performed by the crew dispatcher. The Carrier relies on Rule 4-E-2(a) providing that employes, who are temporarily assigned to higher rated positions, will receive higher rate while occupying such position and Paragraph (b) of the rule providing that a temporary assignment contemplates the fulfillment of all the duties and assumption of all the responsibilities of such position. The Carrier maintains that the Agreement makes no provision for the higher rate if employe is performing a single item of work which is part of the duties assigned to a higher rated position. There is no claim here for reclassification of claimant's position.

This case rests clearly on the question of whether the claimant was assigned work of the Crew Dispatcher, or whether he was merely assisting

him in his work and therefore working under the exceptions contained in Rule 4-E-2(b). The Rule does not contemplate and require the employe to perform all the duties of the Crew Dispatcher before being entitled to the higher rate, for the Rule states the employe can be assigned regardless of the presence of the regular employe, and it follows that this claimant could not be assigned all the work of the Crew Dispatcher if he were present. In Awards 2270, 3032, 4545 and others this Board has held that if an employe is assigned and performs the duties with the responsibilities of a higher rated position he is entitled to the rate thereof, although he may not perform all the duties of said higher rated position. In the instant case the claimant performed work of the Crew Dispatcher such as checking tracks, stamping waybills, interchange work, calling crews and messenger work. It cannot be said that he was assisting the Crew Dispatcher when he did this work for he was performing alone a part of the work of said Dispatcher, he was acting alone and this responsibility of performing the work accurately was on the Claimant alone. We must hold that the claimant, during the period herein involved, was assigned to and performed work of a higher rated position and under the Agreement he was entitled to be paid at the higher agreed rate for the work he performed.

**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 has violated the Agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois this 21st day of December, 1949.