

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement:

1. When they refused to compensate L. P. Grossman, Frank G. Trost, Ralph Howard, Marvin W. Gratke, James J. Peters, Bernard Scalzo, John Hakanson, Henry Durband and Walter Oelschlager, employees of Minneapolis Junction Store, for the period of June 26th to 30th, 1950, inclusive.

2. That said employees now be compensated for the five days in question at their regular rate of pay.

EMPLOYEES' STATEMENT OF FACTS: The following named employees of Carrier were assigned to position included within the Scope Rule of our Agreement with the Carrier that governs the hours of service and working conditions of employees in the Carrier's Minneapolis Junction Stores Dept.

| Name of Employee | Payroll Classification | Rate of Pay | Hours of Service Assignment |
|--------------------------------------|---------------------------|-------------|--------------------------------|
| Frank Trost (Clerk) | 12 | \$13.53 | day 7:50 AM—4:20 PM |
| Ralph Howard (Clerk) | 13 | 12.51 | day 7:50 AM—4:20 PM |
| Marvin Gratke (Clerk) | 14 | 11.91 | day 7:50 AM—4:20 PM |
| Leo Grossman (Store Foreman) | 15 | 12.81 | day 7:50 AM—4:20 PM |
| John Hakanson (Store Attendant) | 17 | 11.70 | day 8:00 AM—4:00 PM |
| Walter Oelschlager (Store Attendant) | 18 | 11.70 | day 8:00 AM—4:00 PM |
| Bernard Scalzo (Material Handler) | 110 | 1.43 | Hr. 8:00 AM—4:30 PM |
| James Peters (Clerk) | 113 | 11.91 | day 7:50 AM—4:20 PM |

Employees' assignment to their respective positions was by bulletin pursuant to provisions of Rule 10 of our General Rules Agreement. Their hours of service assignment was for period of five (5) days per week—Mondays to Fridays, inclusive. The foregoing tabulation includes all of the immediate personnel in the Storekeeper's office except Mr. Pike, Division Storekeeper, and his Chief Clerk.

Commencing June 25, 1950, Carrier's train service was interrupted due to strike of its employees represented by the Switchmen's Union of North America. The Clerical workers—employees concerned in the instant dispute—

point and were under the direct supervision of Mr. T. J. Sullivan, who was the supervisory police officer at Minneapolis, Minnesota. All of the police force in question at various times during the day and night called at the various picket lines to see if there was any disturbance or violence and also had any employe who wished to pass through a picket line to work could have had police protection. The number of pickets which appeared off and on at this particular point during the 24-hour period varied in number from two to over fifty. Some of these pickets were spectators and many were switchmen from other railroads who were in sympathy with the switchmen who were on strike on this Carrier. At this particular point there was no violence and no destruction of property, and to this Carrier's knowledge, no physical harm done to any employe. When these claimants arrived at the picket lines and then refused to cross same and were later seen to become a part of that picket line, they cannot say they were deprived of work by this Carrier. They at no time requested police protection from Mr. Sullivan and they at no time called their superior officer and requested that he furnish police protection to them. Had these employes been sincere in their desire to work knowing that their jobs were available for them, it is only logical to assume that they would have requested police protection to enable them to pass through the picket lines to their jobs. Had this request been made it would have been granted and no bodily harm would have occurred. These claimants in question were not on strike but apparently were sympathetic with those on strike and offered their services in sustaining a picket line in and about the storehouse at Minneapolis, Minnesota. Carrier's police officers many times mingled with the pickets and had any of the pickets wished to work and requested protection, that protection would have been granted. The Carrier holds that these jobs were not abolished; were available to these claimants; and they voluntarily failed to report for their jobs although they were not directly involved in the strike. This is not a case of where the jobs were abolished nor where there was a temporarily closing of the stores department. It was entirely a case of where the work was there and these claimants did not choose to perform it.

It is hereby affirmed that all data herein submitted in support of Carrier's Position has been submitted in substance to the Employee Representatives and made a part of the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: On June 25, 1950 the Carrier's train service was interrupted by a strike of certain employes represented by the Switchmen's Union of North America. At that time claimants involved in the instant case were employed in the Carrier's Minneapolis Junction Stores. Under the terms of the Agreement between the Clerks' Organization and the Carrier, claimants ask that they be compensated for five days (June 26 to 30th, 1950) when they were available, willing and ready to work, but were prevented from doing so by the picket line maintained by the Switchmen's Union of North America. It is asserted that on each and every day during this period claimants reported for work; that on each day they communicated with the Division Storekeeper, advising him of their availability and their desire to work; that the Division Storekeeper took no action to afford them protection while crossing the picket line, and that as a result they were unable to cross the picket line because of threats made by the pickets.

Petitioner contends that under these circumstances, and since the Carrier did not abolish claimant's position during the period of claim, Rule 33 obligates the Carrier to compensate claimants for the days in question.

The Respondent Carrier denies that protection in crossing the picket line was ever requested by claimants. It is stated that claimants' jobs were there for them to perform, and that if they chose not to cross the picket line, then the Carrier had no obligation to compensate them for such days.

Petitioner cites Awards 3723 and 3884 in support of these claims. Both these Awards involved fact situations different from those existing here.

In Award 3723 the Carrier notified the employees not to report, and in Award 3884 the positions were supposedly abolished but the Referee found that they had not been properly abolished.

The evidence of record in this case indicates strongly that claimants made no serious effort to report to their jobs during this period; that the Carrier was not requested to provide protection in crossing the picket line. The record shows also that Company police were available and present at or near the picket line and would have provided protection had it been sought by claimants.

Under the fact situation obtaining here, there is no basis for an affirmative Award.

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

The Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of July, 1952.