

Award No. 6141

Docket No. CL-6071

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

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

(a) The Carrier violated its Agreement with the Brotherhood governing hours of service and working conditions when it permitted or required, through assignment or otherwise, the Engine House Foreman, General Foreman and others not covered by the scope rule of the Clerks' Agreement, to perform clerical work in calling crews at Cravens Yard, Chattanooga, Tennessee, from May 18, 1950, to close of business April 15, 1951; and

(b) That furloughed Engine Crew Dispatcher W. E. Rape shall be compensated for a day's pay at the pro rata rate of the regular rate of an engine crew dispatcher on May 18, 1950, and subsequent thereto until the condition was corrected on April 15, 1951.

EMPLOYEES' STATEMENT OF FACTS: Prior to February 6, 1949, Carrier maintained positions of engine crew dispatchers in around-the-clock operation seven days per week at its Cravens Yards, Chattanooga, Tennessee. On that date, the Carrier abolished the second and third trick engine crew dispatcher positions and the duties thereof were assigned or otherwise transferred to the shop foreman, general foreman and others not covered by the scope rule of the Clerks' Agreement. Claim was filed account of this violation by Division Chairman C. G. Gleaves on February 10, 1949, and progressed through the proper channels to March 16, 1949, when claim was appealed to the highest officer designated to handle such matters. As a result of such handling, a settlement was reached on February 23, 1950. Letter of settlement from the Director of Personnel to the General Chairman is attached hereto and identified as Employees' Exhibit No. 1.

We wish to point out that the language of the Director of Personnel's letter dated February 23, 1950, makes it clear that on or after February 21, 1949, when the second trick engine crew dispatcher position was reestablished, all clerical work which had been removed from the scope of the Clerks' Agreement and assigned or otherwise given to employees outside the scope thereof, was to be rearranged and placed back on clerical positions

Clerical Agreement and the settlement made February 23, 1950, but the Employees' Committee was not agreeable to such joint check being made.

The Employees' refusal to join in a joint check of the work not only prevented the development of the facts involved in an authentic and incontrovertible manner, but also indicates the correctness of Carrier's contention that there was no basis for claim.

Carrier therefore submits that in view of the settlement made February 23, 1950, which constituted an agreement reached by the parties in connection with the re-arrangement made effective February 21, 1949, which was not changed until the re-arrangement made April 18, 1951, at which time third track engine crew dispatcher position was established, in anticipation of abolishment of the position of engine house foreman,—which period of time includes the period involved in this dispute,—it is obvious there is no basis for the instant claim, and said claim should be declined.

* * * *

All matters referred to herein have been presented, in substance, by the Carrier, to the General Chairman of the Organization representing the Employees in this case, either in conference or correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: By virtue of the provisions of Rule 1 (b) in the effective agreement between these parties and the interpretation and application of similar rules in our Awards Nos. 3563, 5785 and 5790 this claim must be sustained.

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 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 agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 19th day of March, 1953.