Award No. 8278
Docket No. CL-7774

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement effective May 1, 1942, except as amended, particularly Rules 4-C-1 and 4-A-1 (i), when effective Sunday, August 16, 1953, Clerk E. A. Dongworth was compelled to suspend work on his regular assignment, Position B-79-G, at South Street Yard, Indianapolis, Indiana, Southwestern Division, while he traveled to West Street Yard, a separate location, and performed clerical duties at that location.

(b) Claimant E. A. Dongworth should be allowed eight hours pay, as a penalty, for Sunday, August 16, 1953, and all subsequent dates on which the violation occurs, until corrected. (Docket W878)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimant in this case held 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, except as amended, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also 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 in this case, Clerk E. A. Dongworth, is regularly assigned to Clerical Position B-79-G located at South Street Yard, Indianapolis, Indiana, Southwestern Division, tour of duty 6:30 A. M. to 3:00 P. M., with one-half hour meal period, Sunday through Thursday, rest days Friday and Saturday. He has a seniority date on the seniority roster for the Southwestern Division in Group 1.

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 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 agreements 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 Employes in this case would require the Board to disregard the Agreement between the parties thereto 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 such action.

CONCLUSION

The Carrier has shown that the assignment of work complained of to Clerical Position B-79-G, was not prohibited by any rule of the applicable Agreement, that the provisions of the Agreement properly entitle Carrier to arrange its work to fit its operational requirements and that the Rules cited by the Employes in their Statement of Claim lend no support to the claim for compensation in this case.

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

All data contained herein have been presented to the employes involved or to their duly authorized representatives.

(Exhibits not reproduced).

OPINION OF BOARD: Two positions are here involved—Clerical Position B-70-G and Clerical Position B-79-G, the latter held by Claimant E. A. Dongworth.

Position B-70-G is a 6-day position located at West Street Yard, Indianapolis, tour of duty 6:30 A. M. to 2:30 P. M., Monday through Friday, rest days Saturday and Sunday. Organization concedes "approximately 3 hours of clerical work is required on this position each Sunday."

Claimant Dongworth's position, B-79-G, is located at South Street Yard, Indianapolis, tour of duty 6:30 A. M., to 3:00 P. M., Sunday through Thursday, rest days Friday and Saturday. It is a 7 day assignment.

On July 29, 1953, Carrier issued and posted a bulletin or notice advising all concerned that effective August 12, 1953 "location of work for positions B-79 (Claimant) and B-78, first and second trick at South Street Yard, will be changed on Sundays to work at South Street Yard and West Street Yard."

Thus, since August 16, 1953, each Sunday Claimant Dongworth has been sent from his South Street assignment, B-79-G, to West Street Yard a distance of approximately two miles, for approximately three hours each Sunday to perform clerical duties at that point.

It is the position of the Organization that "the issue to be decided in this case is whether or not the Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 4-C-1 and 4-A-1 (i), by

requiring the Claimant, E. A. Dongworth, to suspend work on his regular assignment, Position B-79-G, at South Street Yard each Sunday, and perform extra or unassigned work at West Street Yard, and if so, whether or not our claim should be allowed."

It is Carrier's position that "(1) the work which Claimant Dongworth is required to perform at West Street as part of his regular assignment on Sunday, is Group 1 Clerical work covered by the Scope Rule of the Clerical Agreement, (2) is performed by an employe who possesses seniority under the Clerical Agreement and (3) is performed in a single seniority district which is the same as that in which work at South Street Yard is performed. There is nothing in the Clerical Agreement which prevents the regular assignment of clerical work to a clerk having seniority in the district where the work is to be performed, and the Carrier submits that the assignment of this work to Dongworth was obviously proper. * * *

> "The Carrier asserts * * * that the applicable agreement does not prohibit or limit Carrier's prerogative of establishing a regular assigned position which involves the performance of duties at more than one location, but, on the contrary, the Agreement specifically recognizes that such assignments are proper and in accordance with the intent of the Forty Hour Week Agreement."

The decision in this case must turn on whether Carrier violated the applicable Agreement when, effective August 16, 1953 it assigned by bulletin or notice the three hours of clerical work of position B-70-G at West Street Yard to Claimant Dongworth to be performed during and within his regularly assigned hours.

The record here contains the positions of the parties in detail and need not be repeated in this Opinion.

We have reviewed the Awards relied on most heavily by each of the parties. The petitioning Organization leans heavily on Award 5640 (Wyckoff).

That Award, however, noted that

> "* * * in practice the location of positions (there involved) has been customarily bulletined as 'Lindenwood' or 'Ewing Avenue' and not 'St. Louis Terminal' or 'Lindenwood and elsewhere in St. Louis Terminal as needed;' and the title and character of work of positions has not been customarily bulletined in such a way as to indicate that performance of work will be required in the Terminal elsewhere than at the location specified. * * *"

Here, however, Carrier included the work at West Street Yard on Sunday within Claimant's assigned hours by bulletin or notice dated July 29, 1953.

Argument in behalf of Organization takes note of this with the observation that Carrier "also contends that after August 12, 1953 the Sunday work at West Street Yard was regularly assigned to Position B-79-G, hence was not unassigned work on that day; * * *."

Several of the Awards cited by or in behalf of Carrier cover the issues before us.

A closely related case was before this Division in Award 8003 (Bailer). It involved the same parties, same location and same principle as this case, but covered clerical Relief Position No. 11 which was required, by bulletin or notice as in this case, to work at West Street Yard in addition to South Street and LaSalle Street Yards.

In that Award we held:

"We are of the opinion that the Carrier's action did not violate the Agreement. It is not disputed that the Carrier properly established Relief Position No. 11 in the first instance to include protection of Position B-78-G at South Street on Sundays. By posted notice Management then sought to include the contested work at West Street. As previously noted, the work at this other location falls in the same class and craft, is in the same seniority district and carries the same rate of pay. The Relief Clerk is qualified to perform such work. There is no barrier by reason of distance in performing this work within the pre-existing tour of duty. * * *

"Rule 5-E-1 (e) does not bar the Carrier's action, in our judgment. Nothing in that Rule prevents Management from requiring a relief employe to perform similar work under the circumstances here shown. This work was properly assigned to Relief Position No. 11, with the result that Rule 4-A-1(i) is not applicable."

A denial Award is indicated.

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 Employes involved in this dispute are respectively Carrier and Employes 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of March, 1958.