

Award No. 8772
Docket No. CL-8352

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, 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 Clerks' Rules Agreement, effective May 1, 1942 except as amended, particularly Rule 4-C-1, when on April 21, 1951, it notified the employees of the Timekeeping Department, Dining Car Service, Long Island City, Long Island, New York, that instructions to report for work on Sunday, April 22, 1951, were cancelled; and on April 24 and April 25, 1951, it suspended work on regular advertised positions in the Cost and Accounting Departments of the Dining Car Service, Long Island City, Long Island, New York, and assigned seven clerks to duties incident to the closing of payrolls in the Timekeeping Department.

(b) The Claimants named be paid at the rate of time and one half for the dates and hours shown herein. (Docket G-118)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railroad and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimants in this case hold positions 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 Employees 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 Carrier has clearly shown that the applicable Agreement, particularly Rules 4-C-1 and 4-A-6, have not been violated in the instant case and that the present claims have not been filed in accordance with Rule 7-B-1 of the applicable Agreement and for that reason cannot be entertained or allowed.

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

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

(Exhibits not reproduced.)

OPINION OF BOARD: A thorough review of the record before us shows that on May 1, 1951, claims were filed by the Chairman, on behalf of eleven named employees for violations by Carrier, in depriving Claimants of work at the overtime rate, by assigning such work to employees of other departments and used to perform Timekeepers duties, on April 24th and 25th, 1951. This claim was denied by Carrier on May 3, 1951. On June 18, 1951, the Division Committee filed claim with the Assistant Superintendent of Labor for Carrier on behalf of five assigned Cost and Payroll Clerks required to perform Timekeeper duties on April 24th and 25th, 1951. This claim was discussed with Carrier on June 22, 1951, and was denied June 30, 1951.

On September 17, 1951, the Carrier's Assistant Superintendent of Labor and the Division Chairman signed a Joint Statement of Agreed Upon Facts, as well as an inclusion by each of the parties as to their separate positions. It will be noted in the Joint Statement of Facts that no reference is made to a claim regarding a dispute occurring April 22, 1951. When this was presented to Carrier it was the first time Carrier had knowledge that the organization was asserting a claim covering April 22, 1951. Claim for such date does not appear in the claim as shown in the Joint Statement of Facts as agreed to by the parties.

The Board is of the opinion, based upon the record, the claims as presented here, were not properly processed, as provided by Rule 7-B-1, within the time limit prescribed.

The claims should be dismissed.

The claim pending here is not the claim as originally filed, but has been changed by the Division Committee.

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 since the claims are dismissed as not properly before the Board, the merits of the Claims are not considered.

AWARD

Claims dismissed as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of April, 1959.