

Award No. 9678

Docket No. CL-9057

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, 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 the Scope Rule, when it required and permitted Passenger Trainmen not covered by the Clerks' Rules Agreement, particularly Mrs. E. M. Kendler a member of the Brotherhood of Railroad Trainmen, to perform clerical duties in the Crew Dispatcher's Office, Pennsylvania Station, New York, New York, New York Division, commencing April 10, 1955.

b. The Claimant, Clerk-Crew Dispatcher Morris Fogel, should be allowed eight hours pay a day, at the appropriate rate, for April 10, 1955, and all subsequent dates on which the violation occurs, until corrected. (Docket N-406)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees 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 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.

Mr. Morris Fogel, the Claimant in this case, is the incumbent of regular Relief Crew Dispatcher, Position Symbol No. F-3527, Crew Dispatcher's Office, Pennsylvania Station, New York, New York, New York Division, tour of duty various, rest days Sunday and Monday. He has a seniority date on the seniority roster of the New York Division in Group 1.

the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same.

All data contained herein have been presented to the employees involved or to their duly authorized representatives. (Exhibits not reproduced)

OPINION OF BOARD: On April 10, 1955, and apparently on some subsequent dates up to the April 24, 1955, change in train schedules, the Carrier used Passenger Trainmen at Pennsylvania Station (used Mrs. E. J. Kondler and apparently others who are unidentified in the Record) on a compensation basis to contact other Passenger Trainmen (either personally or by telephone) in seniority order to determine their job preference in connection with the rearrangement of Passenger Trainmen assignments, and then to place their names on an assignment sheet. This is the work which is disputed herein. Clerical workers typed the final lists and posted them on the bulletin board, that work not being disputed herein.

The Carrier explains that "the work is given to a B. R. T. representative because she knows the various details of all the assignments and she can readily advise the rates of pay involved in a particular run, the type of bunk room facilities available, the longest layovers in the assignment and many other items involved in such assignments which neither a Crew Dispatcher nor any employe, other than a passenger Trainman, would know". The Carrier also states that "the assignment of passenger trainmen by their representatives in this manner reduces complaints and penalty claims to an absolute minimum". The Organization retorts that "the Carrier would have use believe that a trainman * * * would be more qualified to perform the duties of a crew dispatcher than would a qualified crew dispatcher who spends all of his time in the performance of such work. * * * surely there is nothing in connection with duties performed by a trainman on a passenger train that would qualify him to perform the duties of a crew dispatcher * * *." Suffice it to say that the Carrier has failed to show in the Record why Mrs. Kendler would be more expert as to the items listed by the Carrier than a Crew Dispatcher would be—certainly her normal duty with the Carrier as a Passenger Trainman hardly requires such knowledge in its performance; and while the Carrier asserts that no Crew Dispatcher would possess the required knowledge, the Carrier with apparent inconsistency admits that at the five other terminals specified by the Organization "the reassignment of Trainmen was done by Crew Dispatchers". Indeed, it is clear enough from the Record that the disputed work is by its nature routine Crew Dispatcher work, being in essence not really different from work which Crew Dispatchers perform day in day out throughout the year over the entire system of the Carrier.

The Carrier asserts that its action is supported by past practice, but it has not submitted any evidence whatsoever to support this assertion—even assuming that past practice could provide adequate basis for any conclusion that the work in question could properly be given to Trainmen instead of Dispatchers, a question which need not be decided here since the Carrier failed to prove the alleged practice. Not only does the Organization deny the existence of the asserted past practice, but the Organization points to past claims arising out of the Carrier's use of train service employes to perform Crew Dispatcher work—claims which the Carrier allowed.

In view of the above considerations it must be concluded that the claim should be sustained as to April 10, 1955, and as to any subsequent date up to April 24, 1955, on which Trainmen in fact performed the disputed work at Pennsylvania Station.

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 Employee involved in this dispute are respectively Carrier and Employee 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 claim should be sustained to the extent indicated in Opinion.

AWARD

Claim sustained to extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 7th day of December, 1960.

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****Interpretation No. 1 to Award No. 9678****Docket No. CL-9057**

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

NAME OF CARRIER: The Pennsylvania Railroad Company.

Upon application of the representatives of the employees involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

Third Division Award 9678 is clear and unambiguous on the point involved in the Organization's request for an interpretation (that is, as to whether the Award sustained a claim for any date subsequent to April 24, 1955). The request for an interpretation accordingly must be denied.

The request for an interpretation of the Award is denied.

Referee Frank Elkouri, who sat with the Division, as a member, when Award No. 9678 was adopted, also participated with the Division, in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 11th day of December, 1961.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 9678

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The request for an interpretation of the Award is denied.

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By Order of THIRD DIVISION**

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Executive Secretary**

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