

Award No. 9782

Docket No. CL-9093

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph E. Fleming, Referee

PARTIES TO DISPUTE:

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

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, when on February 12, 1952, work accruing to clerks was assigned to Assistant Agent K. J. Kelly, Reservation Bureau, New York, New York, New York Division.

(b) The Claimant, Clerk H. A. Tekworth, should be allowed eight hours' pay a day, as a penalty, at the rate of \$373.96 a month, for February 12, 1952, and all subsequent dates until the violation is corrected.

EMPLOYEES' 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 the Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Title 1, Section 5, Third (e), of the Railway Labor Act, which has also been filed 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.

Clerk H. A. Tekworth, the Claimant, is regularly assigned to Clerical Position 896, in the Reservation Bureau, Pennsylvania Station, New York, New York, New York Division, tour of duty 8:00 A.M. to 4:30 P.M., including meal period, rest days Saturday and Sunday. He has a seniority date on the seniority roster of the New York Division in Group 1. Prior to January 2, 1958, he was temporarily assigned as "Personnel Clerk".

Prior to February 12, 1952, there was, among others, a position of "Personnel Clerk" in existence in the New York Reservation Bureau. This was an appointive position, the duties of which included assigning regular and extra

Honorable Board, in Award 6946, Referee Edward F. Carter, stated that "The loss of work accrues to the employe who was entitled to it, not to the one who has been paid for performing it." The same Referee said in Second Division Award 1638 that an employe "should be made whole",¹ and that this measure of damages not only "eliminates punitive damages which are not favored in law," but "conforms to the legal holding that the purposes of the Board are remedial and not punitive"; finally, that the purpose of this Board "does not include the assessing of penalties in accordance with its own notions to secure what it may conceive to be adequate deterrents against future violations." In Award 7082, Referee Dudley E. Whiting, it was held:

"Claimant worked the assigned hours of his position performing work within the craft and class to which he belonged and was paid the highest rate applicable to either position. He was in no way injured and a claim on his behalf is therefore wholly lacking in merit."

It is submitted, therefore, that the Claimant is not entitled to the punitive compensation which he claims in Item (b) of the Employees Statement of Claim.

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, which constitutes the applicable Agreement between the parties, 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 in this case would require the Board to disregard the Agreement between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the Agreement. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that the work here in dispute does not accrue exclusively to employees coming under the Scope of the Clerical Agreement, and that the Claimant is not entitled to the compensation which he claims.

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

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimant, with the right to test the same by cross-examination, the right to produce competent evidence on its own behalf at a proper trial of this matter, and the establishment of a record of all of the same.

(Exhibits not reproduced)

OPINION OF BOARD: In 1949 Carrier installed a new system for handling of requests for reservation on its passenger trains known as Intalex Auto-

¹) *ibid.* Making the employe whole simply means he shall suffer no loss.

matic Space Control and Intelelex Automatic Ticket Information. The installation of the equipment took several years. It was installed by the Intelelex people with the help of some of Carrier's employees

On June 27, 1950 Mr. K. J. Kelly was appointed Assistant Agent and assigned to the Reservation Bureau. Claimant here was given a temporary assignment as "Personnel Clerk" sometime prior to January 2, 1952, and on January 2, 1952 a permanent "Personnel Clerk" was appointed. The Claimant continued to assist him until February 12, 1952 when he returned to his regular position 896.

Claimant asserts that on February 12, 1952 Mr. Kelly was assigned and assumed certain duties which he claims was work of the Clerks. Mr. Kelly prepared graphs and schedules, work schedules for the Key Boxes, Space Files and TTA. Carrier claims that the work had never been performed before by clerical employees and that it was directly attached to and incident to Mr. Kelly's work.

The work involved in this dispute is clearly set out in Claimant's letter and the Carrier only denies his assertions in a general way. The answer to their contention that this work was never done by clerks is that Claimant was doing the work until February 12, 1952 when it was assigned to Mr. Kelly. The only evidence as to the amount of time involved in this dispute is by the Carrier who claims that only thirty or forty-five minutes a day was used doing the work that is in dispute.

Therefore the claim should be allowed at the pro rata rate for forty-five minutes per day, instead of eight hours.

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 Carrier violated the Agreement.

AWARD

Claim allowed as indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1961.

DISSENT TO AWARD NO. 9782, DOCKET NO. CL-9093

The undersigned dissent to the holdings of the Majority in this case because the disputed clerical work allegedly performed by the non-agreement

supervisory officer was incident to his responsibility for an entirely new system being installed in the Reservation Bureau, and, if required of clerks at all, would have accrued to the Excepted Personnel Clerk and not to the Claimant who had no valid claim.

/s/ R. A. Carroll

/s/ P. C. Carter

/s/ W. H. Castle

/s/ D. S. Dugan

/s/ J. F. Mullen