

Award No. 9786

Docket No. CL-9414

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 Rule, when it removed the clerical work of checking the private sidings of Sears, Roebuck and Company, and the J. B. Kendall Company, Norfolk Virginia, from a regular clerical position located at St. Julian Avenue Freight Station, Norfolk, Virginia, former Delmarva Division, and required and permitted Freight Conductors, and employees of these two companies to perform the work.

(b) The Claimant, Clerk C. L. Lee, should be allowed a three hour call, as a penalty, for August 30, and September 6, 7, 9, 15, 16, 19, 23, 26 and 28, 1954, and all subsequent dates on which the violation occurs. (Docket E-1047).

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 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 C. L. Lee, was the incumbent of a regular clerical position located at St. Julian Freight Station, Norfolk, Virginia, former Delmarva Division, which is now a part of the Chesapeake Region. Mr. Lee has a seniority date on the seniority roster of the Chesapeake Region in Group 1.

Restaurant Employees International. As such, the Claimant was on leave of absence on many days of the claim performing work in connection with his duties as representative of the above named organizations. Thus, the claimant on these days would not, in any event, be entitled to the compensation which he claims.

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 established that there has been no violation of the applicable Agreement in the instant case 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 Employees, with the right to test the same by cross-examination, 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.

(Exhibits not reproduced)

OPINION OF BOARD: On June 29, 1952 the work of checking tracks at the Sears, Roebuck and Company and J. B. Kendall Company sidings, Norfolk, Virginia, was discontinued by the Carrier. After this date no track check was made by anyone.

Prior to June 29, 1952 train conductors made a record of placement on Forms A. D. 5781 which were used in the computation of demurrage charges. This work of the conductor was incidental to his duties and was not taking any work away from the clerks. The claim therefore should be denied.

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 did not violate the Agreement.

AWARD

Claim denied.

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.