

Award No. 10891

Docket No. CL-10510

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Eugene Russell, 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 2-A-2, 3-A-1, 4-A-6 and 4-C-1, when it failed to place Clerk R. A. Jewell on his regular clerical position, Symbol No. F-65-F, at Columbus, Indiana, Southwestern Region, to which position he was assigned effective February 20, 1956, and required him to work position, Symbol F-38-F, at Frankfort, Indiana, to and including March 23, 1956.

(b) The Claimant, R. A. Jewell, should be allowed eight hours pay a day for February 20, 1956, and all subsequent dates to and including March 23, 1956, as a penalty, and should also be reimbursed for any expense incurred, as provided in Rule 4-G-1(b).

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

Prior to February 20, 1956, the Claimant, R. A. Jewell, was the incumbent of clerical position Symbol F-38-F, at Frankfort, Indiana, Southwestern Region, tour of duty 8:00 A. M. to 12 Noon, 1:00 P. M. to 5:00 P. M., rest days Satur-

not the Claimant is entitled to eight (8) hours' pay a day as a penalty and to be reimbursed for any expense incurred as provided in Rule 4-G-1(b). However, in the event that, contrary to the facts, it is decided that the Agreement has been violated in this case, the Carrier has shown that the Claimant would only be entitled to actual loss of earnings, if any, or, to say it in another way, to be made whole, and that he is in no event entitled to any compensation under Rule 4-G-1(b).

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 and 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 Employees 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 and 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 no provision of the Agreement has been violated in this 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.

All data contained herein have been presented to the employee involved or to his duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This record discloses that prior to February 20, 1956, the Claimant, R. A. Jewell, was the incumbent of clerical position Symbol F-38-F, at Frankfort, Indiana, Southwestern Region, tour of duty 8:00 A. M. to 12 Noon, 1:00 P. M. to 5:00 P. M., rest days Saturday and Sunday, rate of pay \$363.43 a month. Mr. Jewell has a seniority date on the seniority roster of the Southwestern Region in Group 1 of October 3, 1955.

Clerical position Symbol F-65-F at Columbus, Indiana, which is also located within the Southwestern Region seniority district, tour of duty 8:00 A. M. to 12 Noon, 1:00 P. M. to 5:00 P. M., rest days Saturday and Sunday, rate of pay \$361.38 a month, was advertised in Bulletin No. 29 dated February 8, 1956. Award Bulletin No. 29 dated February 15, 1956 was issued, awarding the position to Claimant effective February 20, 1956.

Even though Carrier specified the effective date of the award as February 20, 1956, the Claimant was not placed on Position F-65-F until Monday, March 26, 1956.

Bulletin No. 33, dated February 15, 1956 advertised clerical position Symbol F-38-F at Frankfort, Indiana, Award Bulletin No. 33, dated February 23, 1956, advised that no bids had been received and the position would be filled by appointment.

The position was not filled by appointment and was again advertised in Bulletin No. 45, dated February 29, 1956. Award Bulletin No. 45, dated March 7, 1956, advised that no bids had been received and the position would be filled by appointment.

On March 7, 1956, Mr. W. F. Ertel was newly employed as a clerk at Columbus, Indiana. On March 9, 1956, he was assigned to work position Symbol F-65-F, at Columbus, and worked it from March 9, 1956 through March 23, 1956, daily except Saturdays and Sundays.

A notice dated March 21, 1956, was posted advising that Clerk Ertel was appointed to clerical position F-38-F at Frankfort, Indiana, effective March 26, 1956. Also effective Monday, March 26, 1956, the Claimant was permitted to assume the duties of his regular position, F-65-F, at Columbus, Indiana.

Claim was appropriately filed and appealed up to and including the highest officer designated by the Carrier to handle such matters, but disposition was not made hereon.

The propriety of the handling of this dispute was not questioned by Carrier on the property and is not an issue here.

The Brotherhood claims violation by the Carrier of Rules 2-A-2, 3-A-1, 4-A-6 and 4-C-1, by reason of Carrier's failure to promptly place Claimant, R. A. Jewell, on the awarded position.

The record quotes a letter signed by Claimant dated February 15, 1956 which reads as follows:

"As per your request, I wish to state that I am in no hurry to leave Frankfort freight office to take over position F-65-F at Columbus, Indiana, which as I understand, has been awarded to me thru recent bid. You may effect the change at your convenience, as I am willing to stay in Frankfort indefinitely. Should my attitude change, I shall advise you in writing at least two weeks in advance of the desired change."

From a careful study of this record, the Briefs filed by the parties and the cited awards your Board necessarily finds this claim to be without merit. The preponderance of the evidence does not sustain Petitioner's contention that the letter signed by Claimant was obtained under coercion or duress or in violation of any of the provisions of the applicable Agreement between the parties. We find from a careful study of all the facts appearing in this record that they do not warrant a sustaining award.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employe 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 Contract was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of November, 1962.