

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, 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 (GL-4802) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, when it required and permitted Assistant Agent M. J. Brady in the Ticket Sales and Service Bureau, 30th Street Station, Philadelphia, Pennsylvania, Philadelphia Region, to perform routine clerical duties which accrue to, and are the assigned duties of clerical employees covered by the Clerks' Agreement.

(b) The Claimant, F. Hammet, Jr., Extra Clerk, Ticket Sales and Service Bureau, who was available and qualified to perform the work performed by Mr. Brady, should be allowed eight hours pay for August 6, 1957. [Docket 476.]

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 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, Mr. F. Hammet, Jr., is the incumbent of a position of Extra Clerk and is assigned to the Group 1 Extra List at the Ticket Sales and Service Bureau, 30th Street Station, Philadelphia, Pennsyl-

OPINION OF BOARD: The facts in the instant dispute are set forth in the "Joint Statement of Agreed Upon Facts" as follows:

"F. Hammet, Jr., held Extra Clerk position Ticket Sales & Service Bureau, 30th Street Station, Philadelphia, Pa. On August 6, 1957, he performed no service.

M. J. Brady holds position as Assistant Agent, Ticket Sales & Service Bureau, 30th Street, Philadelphia, Pa. His position is not subject to any of the provisions of the Master Agreement.

On August 6, 1957, Mr. M. J. Brady, Assistant Agent, did perform work of a nature, such as dispensing Pullman to ticket sellers for sale to the public, preparing wire messages, filling requests for Pullman space received from all information positions, etc., which are duties accruing to Group 1 employes (Information Reservation Clerk), under his jurisdiction, as Assistant Agent."

The issue in this case is whether or not the Carrier violated the Rules Agreement, particularly the Scope Rule, when Assistant Agent M. J. Brady was permitted and required to perform clerical work which accrues to, and is ordinarily performed by, clerks covered by the Clerical Rules Agreement and whether the claim should be allowed.

The Organization contends that a mere reading of the Joint Statement of Facts, supra, demonstrates that the work performed by Supervisor Brady, accruing as it does to the Clerks under their Agreement with the Carrier, is a violation of the said Agreement. The Carrier replies that the Organization in 1952 filed certain claims identified as Cases 1512, 1513, 1514 and 1517 all of which were denied on the property. The Organization deferred taking further action because there was then pending a similar case, known as No. 1373, System Docket E-855, which had advanced to the highest level on the property and the matters held in abeyance were awaiting the decision in the said E-855. Docket E-855 was denied, in part on the basis that a supervisory employe may perform a limited amount of clerical duties as the requirements of service necessitate, without causing a violation of the Rules Agreement. Docket E-855 was not progressed further by the Organization. Thereafter, because the Employes had agreed that the 4 cases, involving Assistant Agent Brady, were similar to Docket E-855, these claims were not progressed further by the Organization.

The Carrier asserts that this Board can properly assume from the above that the Employes presenting the present claim accepted the decision that supervisory employes may perform clerical work and that this conclusion represents a proper interpretation of the Agreement. Thus, the Carrier points to the Organization's acquiescence as establishing a past practice accepted by both parties. Further that even if the Organization questions the application of past practice in the instant case it is still the Carrier's position that Brady could perform such work under the terms of the Scope Rule and the interpretation thereto in Award 8331 without violating any provision of the Clerks' Agreement. This Award, based as it is, on a state of facts similar to the matter at bar, states, in pertinent part, as follows:

"* * * Clearly the Agreement covers positions rather than work classifications, * * * and the Clerks do not claim the exclusive right to all work ordinarily classified as clerical, since some clerical work is incidental to many other positions.

Some contention is made that the Clerks' right to clerical work is exclusive wherever a Clerk is assigned. But the Agreement makes no such provision. On the contrary, the Scope Rule brings under the Agreement as Clerks only those employes whose positions regularly involve not less than four hours per day of certain defined clerical work. Since the Scope Rule does not contain an exception to that limitation at stations where there are Clerks, we cannot add such an exception."

Petitioner also advances the theory that since the work in dispute was described in the bulletining of the position that this fact buttresses its argument that the work belongs exclusively to the Claimant. But this contention, not infrequently advanced in the past, has many times been rejected by this Board. In Award 11923 the Third Division answered this argument as follows:

"The Carrier states that bulletins do not grant or take away rights or duties. They are simply advertisements which notify interested parties that certain jobs are available and which give interested parties sufficient information to enable them to bid for the jobs. * * *"

To the same effect see Awards 1315, 7166, and 12177.

Furthermore, the Carrier calls attention to the fact as revealed in the record that the total clerical work being complained of by the Petitioner amounts to 20 minutes during an eight hour tour of duty. This Carrier allegation has not been controverted on the record and, in any case, it is not disputed that in no event could the purely clerical element of the work in question total anything like four hours. The Agreement permits clerical work to be performed by employes not covered by the Agreement provided the said work does not total four hours or more. In conclusion, the Carrier points out that the work performed by the Assistant Agent was "incidental to his regular and primary duties" and therefore could be performed by him without violating the Clerks' Agreement. The Awards in support of this contention are legion of which the following are only a few such decisions: Award 806, 1418, 2138, 2334, 9757, 10506.

Any reasonable interpretation of the facts as juxtaposed against the Agreement in the instant case would seem to indicate that the amount of clerical work performed by Assistant Agent Brady is so slight as to be de minimus.

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 Employes 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

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1964.

LABOR MEMBER'S DISSENT TO AWARD 12434
(DOCKET CL-12149)

The Referee erred in his opinion. That Opinion reads in part as follows:

"Any reasonable interpretation of the facts as juxtaposed against the Agreement in the instant case would seem to indicate that the amount of clerical work performed by Assistant Agent Brady is so slight as to be de minimus."

This supposition is directly contrary to previous awards of this Division; and, particular attention is called to Awards 4448 and 4636 which involved disputes between the same parties and the same rules.

In Award 4448 Referee Adolph E. Wenke said:

"Two principles control this situation. First work embraced within the scope of an agreement may not properly be removed therefrom by the carrier and assigned to employes not subject thereto. See Award 3744 of this Division. Second, the Agreement is applicable to certain character of work and not merely to the method of performing it. See Award 3746 of this Division."

In Award 4636 Referee John M. Carmody said:

"We conclude, in the case before us, that whatever the motive, the Agreement was violated when the Agent, outside this Agreement, spent one and one-half hours checking freight, work regularly assigned to the Tallyman. Awards 3877, 4197."

This same principle has been upheld many times since 1949 when the above referred to awards were adopted.

Additionally, this Division held for the first time in 1936 (Award 198, Referee Wm. H. Spencer), that Carrier cannot do piecemeal that which it has agreed not to do wholesale, which firm principle has been upheld without question for many years. However, contrary thereto, it is Awards such as this one on which we express our dissent, that are chipping away at that basic principle. See Awards 198 (Referee Wm. H. Spencer), 3746 (Referee Adolph E. Wenke), 5100 (Referee A. Langley Coffey), and 6284 (Referee Adolph E. Wenke).

For the above reasons, among others, I vigorously dissent.

C. E. Kief
May 21, 1964