

Award No. 12808

Docket No. CL-12333

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, 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 (GL-4858) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, by permitting employes of United Airlines, not covered by the Scope of the Clerks' Rules Agreement, to perform the assigned duties of the Carrier's Ticket Sellers in the Ticket Sales and Service Bureau, Pennsylvania Station, New York, New York, New York Region.

(b) The Claimant, Ticket Seller Edgar Kaufman, should be allowed eight hours' pay a day, as a penalty, for October 8, 1957, and all subsequent dates until the violation is corrected. (Docket 635)

EMPLOYES' STATEMENT OF CLAIM: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes 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 Employes 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, Edgar Kaufman, is the incumbent of a clerical position of Ticket Seller, Symbol 1151, in the Ticket Sales and Service Bureau, Pennsylvania Station, New York, New York, New York Region. He has a seniority date on the seniority roster of the New York Region in Group 1.

This provision contemplates that such suit "shall proceed in all respects as other civil suits" with the exception that the findings of the Adjustment Board as to the stated facts will be accepted as prima facie evidence thereof. It is clear this provision contemplates the application of the same rule of damages and the same rule against penalties in enforcing contracts as are applied in civil suits generally. An award contrary to these principles would be unenforceable as a matter of law.

For the foregoing reasons, it is respectfully submitted that your Honorable Board may not properly enter such an award in this case.

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 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, sub-section (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out "of grievances or out of the interpretations 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 thereto. To grant the claim of the Employees 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 this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that there has been no violation of the Clerks' Rules Agreement in the instant case and that the Claimant is not entitled to the compensation requested in his claim. Therefore, the Carrier respectfully submits that your Honorable Board should deny the Employees' claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: Employees of United Airlines in New York City issue tickets valid on Pennsylvania Railroad trains for transportation from New York City to Philadelphia. Such United Airlines employees are not covered by the Clerks' Agreement between the Organization and the Carrier. These duties, the Petitioner contends, should be performed by Carrier's Ticket Sellers who are covered under Clerks' Agreement. The issue is whether Carrier violated the Rules of the Agreement, particularly the Scope Rule.

There is no indication by the Petitioner what specific Rule other than the Scope Rule the Carrier may have violated, and we find no other Rule which has any bearing on this issue.

The Scope Rule does not specifically describe nor define the duties of a Ticket Seller. The work of a Clerk is described in general terms. The Third

Division of the Board has held in a long line of Awards that where the Scope Rule prescribes the work in general terms, the Petitioner has the burden of proving that the work involved in the instant dispute was by history, custom and practice the work of employes covered by the Agreement.

Petitioner apparently recognizes this well established principle. In its reply to Carrier's Ex Parte Submission, Petitioner denies Carrier's contention that selling tickets was not the exclusive work of clerical employes. It says that Carrier's position "is untrue and cannot be supported insofar as New York City, the location of the violation in the present case, is concerned." Continuing, Petitioner says that "it is quite clear that the practice whereby United Airline employes in New York City issue tickets which are valid for transportation on Carrier's passenger trains they are performing work that has always been performed by Group 1 clerical employes of the Carrier in New York City and at other locations over the Carriers' System.

But we may not consider alone the practice at the United Airlines. The record shows that the Carrier honors tickets issued by bus companies. Carrier's conductors accept the passenger's bus ticket for transportation to his destination which, for various reasons including hazardous highways, had been interrupted. And Petitioner does not deny this.

In its reply to Carrier's Ex Parte Submission Petitioner attempts to distinguish the practice of honoring bus tickets from honoring United Airlines tickets. It contends that there is no analogy between the two and says:

"In the first place the bus passengers referred to were not transported eighty-five miles beyond their destination, as were the airplane passengers in the present dispute. Instead, they were bus passengers whom the Carrier picked up short of their destination which, for purposes of illustration, we will say was Philadelphia, and transported to their destination. Therefore, as the bus did not bypass Philadelphia and carry the bus passengers on to New York as the airline did, obviously, the Carrier's handling of airline passengers from New York back to their Philadelphia destination is in no way analogous to their picking up bus passengers short of their destination and transporting them on to Philadelphia, as the Carrier admits that these bus passengers were traveling on bus tickets which were accepted by the Carrier's conductors for passage and no back haul was involved.

Petitioner's position is without merit. Whether a "back haul" of bus passengers was or was not involved is immaterial. The fact remains that the Carrier accepted tickets issued by employes other than those covered by the Clerks' Agreement, and other than those issued by employes of United Airlines for passage on Carrier's railroad. And these may have been honored by the Carrier in New York City and elsewhere. The record shows that by history, practice and custom tickets issued by employes other than Ticket Sellers covered by the Agreement have been validated and accepted by Carrier in New York City and elsewhere. Petitioner has failed to show by probative evidence that this practice did not exist.

For the reasons herein stated and on the basis of the record, we are obliged to conclude that there is no merit to the claim.

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 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 July 1964.