

Award No. 12934
Docket No. CL-12803

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, 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-4989) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 3-C-2 and 4-A-5, at the Passenger Station, Cleveland, Ohio, Lake Region, when it abolished a position of Ticket Clerk, Symbol No. F-274, effective August 10, 1959, and a position of Relief Ticket Clerk, no symbol, effective August 9, 1959, and effective August 12, 1959, established a position of Ticket Clerk, no symbol, and Relief Ticket Clerk, no symbol, as intermittent service positions.

(b) Claimants Mildred Gaines and W. F. Purvis, Jr., incumbents of the two abolished regular positions, should be allowed an additional four hours' pay a day, at the punitive rate, as a penalty, for August 10 and 9, 1959, respectively, and all subsequent dates until the violation is corrected.

Extra Clerks Regina B. Mowen and Bertrand Fisher be allowed four hours' pay a day for August 10, 1959 as a penalty, because of the abolishment of the four hours' a day extra position and the establishment of the intermittent service positions, and continuing until adjusted.

(c) Claimants to be paid for work performed on Holidays, or for Holiday pay lost, or on the rest days of their former positions. Also to be reimbursed for all expenses sustained in accordance with Rule 4-G-1 (b). That total monetary loss sustained including expenses, under this claim be ascertained jointly by the parties at time of settlement (Award 7287), and that claim be allowed with interest at rate of one-half of one per cent a month until adjusted. (Docket 740)

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

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 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 Agreements between the parties thereto. To grant the claim of the Employees in this case would require the Board to disregard the Agreements 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 the rules cited by the Employees in their Statement of Claim were not violated, and that the Claimants are not entitled to the penalty payments which they request. Therefore, the Carrier respectfully requests your Honorable Board to dismiss or deny the Employees' claim in this matter.

OPINION OF BOARD: Prior to August 9, 1959, Claimant Mildred Gaines held the position of Ticket Clerk, Symbol No. F-274 and Claimant W. F. Purvis held the position of Ticket Clerk-Relief at Cleveland Passenger Station; the other two Claimants held the positions of Extra Clerks assigned to the Extra List. Effective August 9, 1959, the position of Ticket Clerk-Relief was abolished and the position of Ticket Clerk Symbol No. F-274 was abolished effective August 10, 1959. Claimant M. Gaines displaced an Extra Clerk in the exercise of her seniority and Claimant Purvis made a displacement on position of Ticket Clerk, Canton, Ohio, effective August 20, 1959.

Subsequently, Carrier issued Bulletin 32, dated August 12, 1959, advertising the following positions — Ticket Clerk, no Symbol — tour 8:15 A. M. to 12:15 P. M. and 4:15 P. M. to 8:15 P. M. with Sunday and Monday rest days, and Ticket Clerk-Relief, Wednesday and Thursday rest days. Clerk Mowen was assigned to the position of Ticket Clerk, effective August 20, and Claimant M. Gaines was assigned to the position of Ticket Clerk-Relief effective August 21, 1959.

It was stipulated that the ticket office at Cleveland Passenger Station was open from 8:15 A. M. to 8:30 P. M. and a clerk was on duty at all times.

There having been no discussion of the alleged claims of Extra Clerk Regina B. Mowen and Bertrand Fisher on the property, or in the submissions, they will be given no further consideration here.

Claimants contend that there has been a violation of Rule 3-C-2 of the Clerks' Agreement by the Carrier, Rule 3-C-2 pertaining to the abolishment of positions and a violation of Rule 4-A-5 pertaining to the establishment of intermittent service.

It is the contention of the Carrier that intermittent service was established to meet the demands of the service as Carrier had a right to do and that no clerical work was assigned to employees not within the purview of the Clerks' Agreement at the Cleveland Station.

In Claimant's submissions the statement of facts throughout are in some respects conflicting and somewhat confusing. Claimants fell short of

establishing that there had been any violation of either 3-C-2 or Rule 4-A-5 of the Agreement.

It has been held in previous Awards of this Board that it is the prerogative of the Carrier to determine what work is to be done and the time of its performance. In the exercise of its authority Carrier had a right to establish intermittent service.

It does appear, however, from the record that the positions involved in this proceeding were improperly abolished as is admitted in a letter from the Manager, Labor Relations, to the General Chairman as follows:

"With respect to your contention that the positions should not have been abolished and then readvertised in order to effect the change in hours, we agree that this was not proper under the rules. The incumbents of the abolished positions could have obtained the same assignments if they had submitted bids when the jobs were readvertised as they were the senior employees."

Because of this admitted technical violation, the Claimants should be reimbursed for any monetary wage loss they may have suffered between the dates August 9 and August 10, 1959, and the effective dates of the advertised positions August 20 and August 21, 1959. This monetary wage loss, if any, to be ascertained jointly by the parties.

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 Employees involved in this dispute are respectively Carrier and Employees 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

The Agreement has been violated only to the extent indicated in the Opinion.

AWARD

Claim sustained in accordance with the Opinion. The parties to jointly ascertain any monetary wage loss by the Claimants.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1964.