

Award No. 13013
Docket No. CL-13175

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**
WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5151) that:

(1) Carrier violated the rules of the Schedule for Clerks, effective May 1, 1953, when it required or permitted the Agent-Telegrapher at Robertson, Missouri, to perform the duties of a clerical assignment on March 28, 29, 30 and 31, 1961, on an overtime basis.

(2) Yard and Bill Clerk D. F. Wedemeyer regularly assigned to position No. 5 be compensated two hours at the time and one-half rate of his position for March 28, 29, 30 and 31, 1961.

EMPLOYEES' STATEMENT OF FACTS: Mr. D. F. Wedemeyer was regularly assigned to Job No. 5, Yard and Bill Clerk, at Robertson, Missouri, hours of assignment 9:00 A.M. to 5:30 P.M., Monday through Friday, rest days Saturday and Sunday, rate \$19.86 per day.

Mr. M. D. Horn, Agent-Telegrapher, is assigned to an hourly rated position with hours of service 8:00 A.M. to 5:00 P.M. daily, rate \$2.58 per hour.

As admitted in Mr. F. A. Johnson's Manager Personnel, letter addressed to the General Chairman on July 14, 1961, and presented as Employees' Exhibit No. 6, Mr. M. D. Horn, Agent-Telegrapher, did perform work of preparing waybills on all dates in question on March 28, 29, 30 and 31, 1961.

Mr. M. D. Horn, Agent-Telegrapher, being on an hourly rate of pay with regular hours of assignment of 8:00 A.M. to 5:00 P.M. did receive the overtime rate for all work performed after 5:00 P.M. as provided for under the ORT Agreement.

The regular assigned duties of Clerk Wedemeyer consist of track checking the line, and making a check of the following industries:

Furthermore, Agents and Telegraphers have prepared waybills and switching tickets at scores of stations on this railroad and such is exemplified by the fact that in the State of Missouri alone, there are 25 stations where the only employees are Agent-Telegrapher and/or Telegraphers.

Article V of the Amendments to the Constitution of the United States includes the following guarantee: "No person shall be * * * deprived of life, liberty, or property without due process of law, * * *."

The Congress of the United States has in the exercise of powers granted by Article 1, Section 1, and 8(3) and (18) of that Constitution enacted the Railway Labor Act to provide for and govern collective bargaining relationships in the railroad industry.

The Railway Labor Act provides definite procedures for the handling of requests for changes in existing agreements relating to rates of pay and working conditions, see Section 6, Section 5(a), and Section 7 and Section 10 of that Act.

The Adjustment Board with its various Divisions provided for in Section 3 of that Act is established for the limited and specified purposes provided in Section 3, i.e., to consider and render decisions in disputes "between an employe or group of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions * * *." This Board was granted no authority to add to, change or eliminate any rules of existing agreements or to place the Carrier in any position other than that in which it has placed itself by reason of a collective bargaining agreement.

The Carrier has not by agreement with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes granted clerks the right to the performance of station clerical work to the exclusion of Telegraphers.

In order to sustain this claim, this Board must ignore the limitations upon its authority and the processes provided by law for changing agreements relating to rates of pay and working conditions for railroad employes and thus deprive the persons who own this company of property without due process of law.

The Board has no jurisdiction to supply that which the Schedule for Clerks does not contain.

In view of the foregoing, the claim should be dismissed for lack of jurisdiction or denied for the reason that it is not supported by the rules of the agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arose by reason of an alleged violation by Carrier in requiring or permitting the Agent-Telegrapher at Robertson, Missouri to perform duties of a clerical assignment on March 28, 29, 30 and 31, 1961.

We are immediately confronted with the question of whether or not the claim has been properly processed so as to vest jurisdiction in this Board. It is agreed that no conference was requested or held on the property

in an attempt to resolve this controversy. Carrier contends that the applicable provisions of the Railway Labor Act make such a conference a jurisdictional prerequisite to submission to this Board. Carrier cites numerous awards supporting their contention which point out that this requirement expresses the reasonable intent of Congress that every effort be made to resolve these controversies before resorting to this Board for a decision. The awards cited are: 9578 (Johnson) 10852 (McGrath) 10868 (Kramer) 10939 (McMahon) 11136 (Moore) 11434 (Rose) 11484 (Hall) 11737 (Stark) 11896 (Hall) 11791 (Stack) 12290 (Kane) 12468 (Kane) 12499 (Wolf).

The Brotherhood contends that this Board has jurisdiction, even though no conference was requested or held. It takes the position that unless there is some evidence that one of the parties wanted a conference and requested it, then such conference may be waived by the parties without affecting jurisdiction of this Board. It also cites awards supporting this position, among them are: 2786 — Mitchell, 7403 — Larkin, 10434 — Dolnick, 10567 — LaBelle, 10675 — Ables, 10950 — Ray and 12853 — Coburn.

Although we are always reluctant to dismiss a matter without deciding the merits, we feel compelled to deny jurisdiction in this case. We are of the opinion that the awards supporting Carrier's contention in this case more likely reflect the intent of Congress, as well as sound reasoning, than those deciding that an attempt to confer is unnecessary to vest jurisdiction in this Board. We therefore hold that this Board is without jurisdiction to consider the merits of this case and that same must be dismissed.

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 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 does not have jurisdiction over the dispute involved herein.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1964.