

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

HOUSTON BELT & TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4800) that:

(1) The Carrier violated the Clerks' Agreement on September 12, 1959, when it required Mr. A. N. Clinkscale to perform service on position of Messenger No. 258 on his rest day, compensating him only at the pro rata rate of pay, and failed to permit Mrs. Nola N. Cohn to perform the required service.

(2) Mr. Clinkscale shall now be allowed the difference between the pro rata rate and the time and one-half rate for service performed on September 12, 1959.

(3) Mrs. Cohn shall now be allowed one day's pay at the rate of position of Messenger No. 258 for September 12, 1959.

EMPLOYEES' STATEMENT OF FACTS: Mrs. Delma Kay, assigned occupant of Messenger Position No. 258, with assigned hours of 6:30 A. M. to 3:00 P. M., Monday through Friday, and rest days of Saturday and Sunday, was off on sick leave from September 4 to September 15, 1959.

Mrs. Nola Cohn, assigned occupant of Messenger Position No. 260, with assigned hours of 2:00 P. M. to 11:30 P. M., Monday through Friday, and rest days of Saturday and Sunday, was assigned to work Messenger Position No. 258 while Mrs. Kay was on sick leave.

Mr. A. N. Clinkscale, an Extra Board employe, was first out on the Extra Board and was called and assigned to fill the vacancy on Messenger Position No. 260 which was caused by Mrs. Cohn moving to Messenger Position No. 258.

During the period extending from September 4 to September 15, 1959, Mrs. Cohn was assigned to Position No. 258 and Mr. Clinkscale was assigned to Position No. 260.

Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employe."

In conclusion, Carrier would point out that Award 6976, referred to in Mr. Ligon's letter of January 13 (Exhibit I), has to do with regular, not extra, men, and would state that the fourth paragraph of Mr. Ligon's letter of February 26 (Exhibit K), while probably immaterial to this dispute, conflicts with Carrier's information and records, which indicate that Clinkscale was called from the extra board to fill the vacancy on Job 260 Friday, September 4.

(Exhibits not reproduced.)

OPINION OF BOARD: The regular occupant of Position No. 258 was on sick leave from September 14 to September 15, 1959. Mrs. Cohn, Claimant, assigned occupant of Position No. 260, worked Position No. 258 with rest days on Saturday and Sunday.

On Saturday, September 12, 1959, the relief clerk assigned to work the rest days of Position No. 258 failed to report for duty. Clinkscale, Claimant, an extra clerical employe, was used to work the position and paid the pro rata rate.

The Organization contends that since Clinkscale has relieved on the assignment he was no longer an extra employe, and was erroneously called to work on the rest day instead of Mrs. Cohn, for which he must be paid time and one-half. Mrs. Cohn to be allowed one day's pay at the rate of that position, as she was entitled to perform the service required on that position on September 12, 1959.

The Carrier contends that the record does not reveal that a conference was held on this dispute during the handling on the property as required by the Railway Labor Act; consequently, this Board has no jurisdiction to adjudicate this dispute.

The facts reveal that the entire dispute while at the lower level was filed, discussed and appealed to this Board by correspondence. There is no evidence submitted in the record that the parties to this dispute sat down in conference and attempted in good faith to obtain a settlement. Claimant's Exhibit G states: "If you wish a conference before rendering a decision, I shall be available on the date and time suggested by you." Carrier's Exhibit L states: "... I shall be glad to confer with you on the Clinkscale-Cohn claim..." Nothing came of these proposals, and we are of the opinion that the failure to have a conference on this dispute was just an oversight on the part of the Claimant and Carrier.

Provisions of the Railway Labor Act directly pertinent to the holding of a conference between the parties to a dispute are found in Section 2, Paragraphs First, Second, and Sixth. In the interest of brevity, I will not quote these sections, as their provisions are familiar to the members of this Board. The general purpose of the requirement, that a conference be held on the local level, is that: (1) The parties to the dispute are present, (2) The circumstances that gave rise to the dispute are more easily discussed and understood, (3) Witnesses are available, (4) Custom, practice and the situation in

general is better understood at that level, (5) The give and take of bargaining is possible, (6) The intent of the law, if possible, was to have the parties resolve their disputes, rather than seek the aid of third parties.

We are of the opinion that this Division of the Board lacks jurisdiction of this dispute because the parties failed to have a conference on the property, in respect to such dispute, as required by the Railway Labor Act and the awards of this Division. We are further of the opinion that a conference was not possible.

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 does not have jurisdiction over the dispute involved herein; and

1. No conference was held on the property.
2. No facts were presented to show that a conference was not possible.
3. That this Division of the Adjustment Board does not have jurisdiction of this dispute.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1964.