

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

"(1) Assignments of Chauffeurs work, hereinafter described, to employes (Electricians, Electricians Helpers, Signalmen and Car Repairmen), not covered by the Clerks' Schedule is a violation of the Scope Rule and Regulations 1, 2, 3, 4-G-1, 4-G-2 and 9 of the current schedule of regulations, and

"(2) That Chauffeurs work shall be assigned to and performed by Chauffeurs holding seniority rights under said schedule, and

"(3) That senior regular or extra chauffeurs holding seniority rights to perform and be paid for such work shall be paid for wage losses sustained as a result of violation of their seniority rights retroactive to February 1, 1938."

EMPLOYEES' STATEMENT OF FACTS: "Emergency Truck No. 2 is used to carry material and men for repairs to high tension and third rail equipment. This truck is operated twenty four (24) hours per day, on a three shift basis. Material is picked up at the storerooms and delivered to the location where repairs are made. Electricians are assigned to operate this truck, except when it is laid up for repairs a chauffeur under the Clerks' Schedule operates the truck assigned. Headquarters Morris Park.

"Truck No. 8 is used to carry material for the Telephone and Signal Department and is operated on an eight (8) hour basis. This truck is principally used to carry material from the storerooms to the job and cannot be considered an emergency service. This truck is operated by an Electricians' Helper. Headquarters Morris Park.

"Truck No. 5 is used to carry material and men for repairing freight cars or occasionally re-railing a freight car. While this truck is not used every day such days as it is in use is for transporting material. This truck is operated by a Freight Car Repairman. Headquarters Holban Yard.

"Trucks Nos. 1, 3, 4, 6, 7, 9, 22, 23, 25 and 27 are operated by chauffeurs under the Clerks' Schedule. They are used for transporting materials from storerooms to locations on the railroad where repair work is done and to deliver material to the storerooms. Occasionally employes are transported from one location to another by these trucks. Headquarters Morris Park.

"IV. The Claimants Are Not Entitled to Compensation For Not Having Been Used To Perform The Work In Question.

"As set forth above, the work in question is not included within the scope of the Claimants' agreement with the Carrier. Consequently, the Carrier is under no obligation to use them to perform it and therefore, they are not entitled to any compensation for not having done this work.

"Moreover, it has not been shown that any of the Claimants have suffered actual wage loss by virtue of not having been used to operate the trucks involved herein.

"V. The Provisions Of The Agreement Or 'Schedule Of Regulations' Upon Which the Claimants Apparently Rely Furnish No Support For Their Claim.

"The Claimants apparently rely for support of this claim on the contention that the Carrier has violated the following provisions of the Schedule of Regulations:

"Scope—which defines coverage of agreement; Regulation No. 1—Promotion; Regulation No. 2—Advertising and selection of Positions; Regulation No. 3—Seniority Provisions; Regulation No. 4-G-1—Rating of Positions and prohibiting transfer of rates; Regulation 4-G-2—Prohibiting discontinuance of Positions to effect reduction in rates of Pay or evade application of Agreement.

"The 'Scope' of this Agreement as heretofore clearly stated excludes from all of the provisions of the Agreement the work to which this claim relates. Because of this exclusion none of the terms or provisions of this agreement are applicable to such work, and the Carrier has not violated the agreement by failing to use the Claimants to perform it.

CONCLUSION

"Therefore, the Carrier respectfully submits that the unnamed Claimants, are not entitled to perform the work in question, nor to any money payments because the Carrier has not used them to perform this work, and respectfully requests your Honorable Board to dismiss the claim of the employes in this matter."

There is in evidence an agreement between the parties bearing effective date of December 1, 1935.

OPINION OF BOARD: This claim is based upon an alleged violation of the scope rule of the Clerks' Agreement, and its disposition must rest upon a determination as to whether the work performed in driving Truck No. 2, Truck No. 8, and Truck No. 5 by electricians, electrician helpers, and car repairmen is embraced within the scope rule of that Agreement. The Clerks' Agreement includes "Chauffeurs, except those covered by the Maintenance of Equipment or Maintenance of Way Department Employes' Regulations." No chauffeur classification as such appears in the agreements of the carrier with the maintenance-of-equipment or maintenance-of-way organizations involved, and no such classification appeared at the time the Clerks' Agreement was negotiated. On the other hand, the work at issue performed on these trucks was being performed by maintenance-of-equipment and maintenance-of-way employes, in connection with their duties as electricians, electrician helpers, or car repairmen, at the time the Clerks' Agreement was negotiated and for many years prior thereto. Under these circumstances there is every reasonable basis for holding that the exception in the scope rule of the Clerks' Agreement excluded this work from its incidence. The narrow and technical interpretation contended for by the employes—that the mere absence of the chauffeur classification as such in the other agreements necessarily subjected this work to the Clerks' Agreement—would render the exception, deliberately included in the scope rule

by agreement of the parties, entirely meaningless and without effect. To uphold such an interpretation would not only constitute a sharp departure from sound rules of construction of written instruments, but would be tantamount to altering the express terms of the Clerks' Agreement, which is clearly beyond the authority of this Board.

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 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 evidence of record does not disclose any violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of July, 1940.