

Award No. 3695

Docket No. CL-3629

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee that the Carrier violated the Clerk's Agreement at Brier Hill, Youngstown, Ohio when on June 9, 1946 and subsequent dates it permitted and required the Mechanical Department General Foreman, an employe not covered by the Clerks' Agreement to perform work covered thereby, and

That Carrier shall now compensate employe Carl Jack for a call on June 9, 1946 and for each day thereafter when the Carrier utilized the services of the General Foreman in taking employes, tools and/or material to repair railroad equipment.

EMPLOYES' STATEMENT OF FACTS: Prior to June 9, 1946, it had been the practice at Brier Hill for the employe assigned to drive the Stores Department truck to perform all of the overtime truck driving in accordance with memorandum of agreement dated March 21, 1939, copy attached and identified as employes Exhibit "A."

On June 9, 1946, Mr. L. A. Hartley, General Foreman, Mechanical Department, Brier Hill, hauled men and tools to Ferrona, Sharon, Pennsylvania to repair Engine No. 4204 account of derailment. Mr. Hartley used his own car for this purpose. Subsequent to June 9, 1946, Mr. Hartley has continued to utilize his personal automobile to perform work previously performed by Stores Department truck.

Employe Carl Jack is required to maintain a telephone at his home and must be available for call at all times, not only by the Mechanical Department but by the Car Department, to handle men, tools and materials to wrecks; also by the Chief Dispatcher when needed to handle United States mail. Whenever this employe leaves his home at night, Sundays and holidays, he must report to the Chief Dispatcher so that he can be reached at all times, and on the particular date in question, Sunday, he should have been called in line with past practice and the memorandum of agreement above referred to.

POSITION OF EMPLOYES: There is in effect between the parties an agreement bearing established date of July 1, 1945 which contains the following rules:

Rule 1 (Scope) reads as follows:

(a) These rules shall constitute an agreement between the Erie Railroad Company and its clerical, office, station and store-

Such emergency situations occur at times at practically all locations on the railroad, and carrier never has and never would agreed to any rule that would restrict or delay transporting of men, tools, materials or supplies to the scene of an emergency, and it would be unreasonable to request such a rule.

In the discussion of this claim on the property, Employees refer to a Memorandum dated March 21, 1939 as basis of their claim.

This memorandum reads as follows:

"March 21, 1939

"It is agreed that claims Nos. 235 and 275, at Brier Hill and Sharon, based on alleged rule violation, are hereby settled by cancellation with the understanding that in the future Stores Department truck driver would be used for all overtime truck driving.

"For the Employees

For the Railroad

"Sgd. J. J. Schreur
General Chairman

Sgd. A. L. Sorensen
Manager of Stores"

This memorandum provides only that when Stores Department truck is required for overtime truck driving, the Stores Department Truck Driver will be called. Prior to March 21, 1939 there had been instances where the Stores Department truck had been used and operated by other Employees of other Department.

The Memorandum gave the regular assigned Stores Department Truck Driver preference for all overtime truck driving.

There was no provision in the Memorandum dated March 21, 1939 that placed a requirement on the Carrier to use the Stores Department truck for any such cases as herein involved. Nor is there any restriction in the use of the truck for any purpose. If used, the regular assigned truck driver is called.

On June 9, 1946, the Stores Department truck was not used or needed, and no one was called or used as a truck driver in the place of Carl Jack.

On June 9, 1946, General Foreman Hartley had his automobile available and lost no time in getting to Ferrona when ordered by his Superintendent. The Machinist and Machinist's Helper were on duty and working at Brier Hill. Use of Stores Department truck would have required calling Truck Driver Carl Jack and there would have been a delay with nothing gained.

There is no rule in the Agreement December 1, 1943 that would support this claim filed on behalf of Carl Jack, Stores Department Truck Driver. In the discussion on the property the Employees alleged violation of the Memorandum dated March 21, 1939. There was no violation of that Memorandum because Stores Department truck was not used or needed. Employees did not at any time show or allege violation of any negotiated rule in Agreement dated December 1, 1943.

Exhibits not reproduced.

OPINION OF BOARD: The relevant facts in this case are simple and undisputed. The roundhouse general foreman at Brier Hill, Youngstown, Ohio, on Sunday morning, June 9, 1946, drove his own car to an engine derailment at Ferrona, Pennsylvania. He took with him two mechanics and some tools.

The Organization claims the Carrier, in permitting the foreman to transport mechanics and tools, violated Rule 1 (Scope Rule) of the Agreement and a supplemental Letter Agreement of March 21, 1939, which said, in part, "that in the future Stores Department Truck Driver would be used for all overtime truck driving."

The claim is without merit. Although Rule 1 gives the Organization the work of "Storehouse forces such as power truck operators chauffeurs * * *

and others performing similar work in connection with any of these operations" it by no means gives the Organization jurisdiction over all the Carrier's truck driving and chauffeuring. This was no Stores Department assignment. If it had been, a different question would have been before us. Or, if a Stores Department truck had been called for, the Carrier would have been bound by the Letter Agreement to call a Stores Department truck driver to do the driving. Such conjecture, however, is out of line with the facts.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1947.