

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, 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 that A. H. Whitaker be paid one day's pay at the appropriate rate account of Signal Department employes unloading PRR-45091 at Terre Haute Freight Station on May 10th, 1946; unloading freight from box car and trucking through freight-house in violation of the Scope of the Agreement. (Docket W-436.)

EMPLOYES STATEMENT OF FACTS: The Claimant, A. R. Whitaker, held a regular assignment as Trucker at the Freight Station, Terre Haute, Indiana, tour of duty 8:00 A. M. to 5:00 P. M. (one hour for lunch), daily except Sundays and Holidays. This is a six day position and is not necessary to the continuous operation of the carrier.

A. R. Whitaker's position along with two regular assigned gangs was abolished, effective May 10th, 1946.

On May 10th, PRR car 45091, loaded with company material, and traveling on a non-revenue waybill was placed at this freight station for unloading. Between 1:00 P. M. and 3:00 P. M. two employes of the signal department (these employes are not covered by our working agreement), removed a number of shipments from this car (4,684 pounds) of signal department material and handled these shipments from the car to a Company truck parked at a door through which freight is usually received by consignees. Shipments of company material that remained in the car were unloaded and handled by truckers on May 11th, 1946.

Because of signal employes unloading a portion of the shipments of company material contained in this car, claim was made as indicated in Statement of Claim and was denied by the carrier. No other claims were filed.

There is in evidence a Rules Agreement between the parties bearing effective date of May 1st, 1942, which is on file with your Board.

POSITION OF EMPLOYES: The Scope of the agreement in effect between the parties to this dispute provides as follows:

"These Rules shall constitute an Agreement between The Pennsylvania Railroad Company and its employes of the classifications herein set forth as represented by the Brotherhood of Railway

It is, therefore, respectfully submitted that the claim is not supported by the applicable Agreement and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was a regularly assigned Trucker at Terre Haute Freight Station, hours 8:00 A. M. to 5:00 P. M., with one hour off between 12:00 noon and 1:00 P. M. His position was abolished, effective May 10, 1946. On that date a car containing numerous shipments of Company material was placed at the Terre Haute Freight Station for unloading.

Between 1:00 P. M. and 3:00 P. M. two employees of the Signal Department removed a number of shipments (4,684 pounds) of Company owned signal department material from said car and handled these shipments from the car to a Company truck that was parked at a door through which freight is usually received by consignees. The remainder of the contents of the car was unloaded and handled by Truckers the next day.

The work of unloading such cars is usually performed by Truckers.

The Organization contends that the work so done by the two Signalmen was Truckers work, work which would have been done by Claimant if his position had not been abolished; and that the Carriers permitting the two Signalmen to do this work constituted a violation of the Scope Rule and also of Rule 3-C-2. This latter Rule provides that work formerly assigned to a position covered by the Agreement shall be assigned to other positions under the Agreement where other positions remain in existence at the location where the work of the abolished position is to be performed. There were other Truckers' positions remaining in existence at this location.

The Carrier contends that the description of the work of Truckers in the Scope Rule, "Truckers—Freight or Baggage," only covers the trucking of revenue freight or baggage from which the Carrier has received revenue under the applicable tariffs. To support this contention, the Carrier points out that employees from other departments are extensively used on this railroad to unload Company material for use in the department in which they are employed, but admits that where Company material is unloaded at Freight Stations, where Group 12 employees are employed, such work is usually performed by these employees.

This admission would seem to disapprove the contention of the Carrier that it is only revenue freight and baggage work that belongs to Truckers. We are, therefore, of the opinion that where such work is done at a freight station where Truckers are employed, the work belongs to the Truckers.

The Carrier here violated the Agreement by permitting the Signal Department employees to do this work.

While the claimant here may not have been technically an "extra" employee within the meaning of Rule 5-C-1, he was unassigned and it is our opinion that Rule 4-A-6 was intended to provide a "notified or called" rule to cover all employees, paragraphs (a), (b) and (c) thereof covering regularly assigned employees and paragraph (d) of said Rule covering all employees other than regularly assigned employees and those paid on a tonnage or piecework basis.

Since Rule 4-A-6, (d) provides for a minimum of four hours at pro rata rate and since the work here in question was performed by two men within two hours, the claimant should be paid the minimum of four hours at the pro rata rate.

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 has jurisdiction over the dispute involved herein; and

That the Agreement was violated by the Carrier.

AWARD

Claim sustained for four hours pay at Claimant's pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of March, 1948.