

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, 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) The Carrier violated the provisions of the Rules Agreement, effective May 1, 1942, Rules 3-C-2 and the Scope, when it abolished position of Crane Operator located in the Stores Department, Undercliff Yard, Cincinnati, Ohio, effective June 18, 1945, and assigned the duties to a car repairman helper, a position not covered by the Scope of the Rules Agreement.

(b) A position of Crane Operator be re-established, advertised and awarded as provided in the Rules Agreement. (Docket W-373.)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class of employees to which the position and work involved in this case accrues, and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Carrier maintains a repair yard at its Undercliff Yard, Cincinnati Division, Cincinnati, Ohio, and in connection therewith a stores department. For about ten to twelve years prior to June 18, 1945 a stationary crane was used primarily for loading, unloading, and handling stores material. This crane was operated by an employee holding position of Crane Operator coming under the Scope of the Rules Agreement, covering Clerical, Other Office, Station and Storehouse Employees which were in existence during this period. At no time during this period was there any dispute that this position and this work was improperly allocated to this class or craft of employees.

Effective June 18, 1945, the carrier abolished this position and unilaterally assigned the duties, all of which remained, to a position of freight car repairman helper. The use of the stationary crane was discontinued and

lined in Rule S-A-1 (scope rule). The Carrier rejected the proposals because of the established practice involved which was based upon the practical operation of the railroad. The parties thereupon adopted a scope rule which did not contain language similar to Rule S-A-1, proposed by the employees. This scope rule, insofar as it concerns the instant dispute, reads as follows:

"These Rules shall constitute an Agreement between The Pennsylvania Railroad Company and its employees of the classifications herein set forth as represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and shall govern the hours of service, working conditions, and rates of pay of the following positions and employees of The Pennsylvania Railroad Company subject to such modifications and exceptions as are set forth in Supplemental Agreement 'A.'

Group 1—Clerks as defined in the following paragraph:

Group 2—Other Office, Station Storehouse Employees of the following Classifications:"

* * * *

In view of the language of the agreed-upon scope rule, quoted above, in the light of the proposal for which it was substituted, it is clear that in making the Agreement of May 1, 1942, the parties intended that it should apply only to such positions as were established, or might be established, exclusively to perform the work outlined therein.

The Carrier respectfully requests your Honorable Board, therefore, to deny the claim in the instant case.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement Between the Parties and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3 (i), confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the agreement between the parties thereto and impose upon the Carrier conditions of employment, and obligations with reference thereto, not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that, under the applicable Agreement between the parties to this dispute, the operation of the Crane Kar involved is properly assigned to an employee covered by another agreement and is not service which accrues to the craft or class of which the Claimants are members.

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: The Brotherhood contends Carrier violated the provisions of their Agreement effective May 1, 1942, particularly Rule 3-C-2 and the Scope, when it abolished the position of Crane Operator in the Stores Department, Undercliff Yard, Cincinnati, Ohio, as of June 18, 1945, and assigned the duties thereof to an employee not covered thereby. It asks that the

position of Crane Operator be re-established, advertised and awarded to employees covered by their effective Agreement.

The record discloses that prior to sometime in 1945 Carrier maintained a stationary crane in its car shop located at its Undercliff Yard, Cincinnati Division, Cincinnati, Ohio. In connection with this car shop the Carrier operated a Stores Department. For many years prior to 1945, and at the time their present Agreement became effective, May 1, 1942, this crane was used by the employees of both Stores Department and Maintenance of Equipment Department for loading, unloading and handling material and supplies for their respective departments. Sometime in 1945 the Carrier discontinued the use of the stationary crane and installed a five ton traveling Krane Kar with lift boom attached. This Krane Kar was used to load, unload and handle materials and supplies for both the Stores Department and the Maintenance of Equipment Department with a freight car repairman helper, an employee not covered by the Clerks' Agreement in charge of the operation thereof. A study of the use of this Krane Kar shows it is being used about three hours per day in doing Stores Department work and about five hours per day in doing Maintenance of Equipment Department work.

No position of Crane Operator was ever assigned to the stationary crane but employees of either department operated it whenever necessary in the loading, unloading and handling of materials and supplies for their respective departments, the employees of the Stores Department being within the scope of the Clerks' Agreement effective May 1, 1942.

We find the Carrier's contention that this is a jurisdictional dispute between two classes or crafts of employees as to which is entitled to perform a certain type of work of which this Board has no jurisdiction to be without merit. This is a claim relating to a violation of the Scope of the parties' Agreement by the removal of work therefrom. See Award 2253 of this Division.

Two principles control this situation. First, work embraced within the scope of an agreement may not properly be removed therefrom by the carrier and assigned to employees not subject thereto. See Award 3744 of this Division. Second, the Agreement is applicable to certain character of work and not merely to the method of performing it. See Award 3746 of this Division.

Prior to the installation of the Krane Kar the work of loading, unloading and handling materials and supplies for the Stores Department, which is now being done by the Krane Kar, was done by employees of the Stores Department and within the scope of the Clerks' Agreement. The Carrier could not properly remove it therefrom by merely changing the method of its performance. It is, of course, not necessary for the Carrier to establish a position which never has existed but it is necessary that it restore the work of loading, unloading and handling of Stores Department materials and supplies to employees under the Clerks' Agreement and we find that it must do so. It may be, as Carrier suggests, that it presents a difficult problem for management to do so but we cannot abrogate the provisions of a contract merely because of that fact. Proper methods are available to the Carrier to solve its problems but not by the method it has here chosen.

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 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 Carrier has violated the Agreement.

AWARD

Claim sustained to the extent that Carrier is required to restore to employes of the Clerks' Agreement the work removed therefrom of loading, unloading and handling Stores Department materials and supplies formerly done by employes thereof when a stationary crane was used and now being done by an employe, not under their Agreement, by means of a Krane Kar.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of July, 1949.