

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John M. Carmody, 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 Management violated the provisions of the Rules Agreement, effective May 1, 1942, particularly the Scope, Rule 3-C-2, and Rule 9-A-2, when position of Oil and Grease Mixer was advertised to M. of E. Department employees, March 20, 1947, South Altoona Foundries Altoona Works.

(b) W. W. Decker, Stores Laborer, be allowed eight hours pay at the Oil and Grease Mixer's rate from March 1, 1947 until claim is adjusted.
(Docket A-51)

EMPLOYEES 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 or craft of employees in which the claimant in this case held a position 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 claimant in this case is an employee holding a regular position covered by the Scope of that Rules Agreement having seniority standing in Group 2 on one of the Seniority Districts of the Altoona Works.

This claim has been properly presented and progressed in accordance with the applicable rules of the Rules Agreement. This is not contested by the Carrier. The case was progressed by means of a joint submission which is attached as a part of this Statement of Facts and marked Employees' Exhibit "A."

For convenient reference we quote from the "Joint Statement of Agreed Upon Facts" in this joint submission:

"On 12-1-25 the position of Oil and Grease Mixer was established at South Altoona Oil Mixing Plant, rate of pay .65c per hour, incum-

years it belonged to that class of employees. Quite the contrary, they said that since the work involved accrued to clerks the Carrier must at once use a clerk therefor. This was done immediately and the shop craft employees were not consulted with respect to removing clerical work from an employee to whom it did not belong. After this action was taken the only question that remained was the one of compensation, if any, owing to the clerical employees. In the circumstances present no compensation was allowed.

Had the Carrier continued the position of oil and grease mixed as a Group 2 position after the retirement of Lego, it would have been faced with claims from shop craft employees since the work was clearly within the scope of the shop craft agreement.

While the Carrier does not anticipate that the Employees will present to your Honorable Board any contention that the position belongs to them, other than on the grounds that a group 2 employee filled it over a considerable period of years, it wishes to point out that if the position of oil and grease mixer accrues to Group 2 employees, then all of the employees engaged in exactly the same character of work at the Oil Mixing Plant should be classified in Group 2. Such a request that all of the assigned laborers at the Plant be placed under the Clerks' Agreement, was presented to the Carrier in 1944 but the Clerks' Brotherhood finally agreed to withdraw the claim.

The Carrier has shown above that the position involved herein comes within the scope of the agreement between the Carrier and its shop craft laborers. Since this is so, neither W. W. Decker, nor any other Group 2 employee, is entitled to any compensation because of the performance of work in the Oil Mixing Plant by shop laborers. It is, therefore, respectfully submitted that the claim in the instant case should be denied.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement 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, which constitutes the applicable Agreements between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (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 agreement 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 hereto 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 any such action.

CONCLUSION

The Carrier has established that there has been no violation of the Agreement and the Claimant is not entitled to the additional compensation which he claims.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the employee in this matter.

Exhibits not reproduced.

OPINION OF BOARD: The essential facts are not in dispute. They are set forth in the record in a Joint Statement of Agreed Upon Facts:

"On 12-1-25, the position of Oil and Grease Mixer was established at South Altoona Oil Mixing Plant, rate of pay .65c per hour, incum-

bent, J. L. Cox. On 8-9-26, J. L. Cox left position and returned to the Storehouse as a Store Attendant. On 8-9-26, John Lego, who was a laborer working in the Oil Mixing Plant was given the position of Oil and Grease Mixer at the same rate of pay or .65c per hour. John Lego continued on this position until his retirement 2-28-47. The position of Oil and Grease Mixer has since its establishment been a position accruing to the Miscellaneous Forces and perpetuated under the Agreement, effective May 1, 1942.

On 3-1-47, notice #67 was posted, abolishing the title and rate of pay of Oil and Grease Mixer. Notice was signed by George Hoover, Foreman of the Oil Mixing Plant.

On 3-20-47, bulletin #86-P was posted advertising an Assigned Laborer position, due to the retirement of John Lego. Qualifications being that of an Oil and Grease Mixer, rate of pay .885c per hour, as established graded rate basis. This bulletin advertising the position to the Shop Craft (C. I. O.) Labor group, was signed by George Hoover, Foreman, but was later taken from the bulletin boards."

At the time this Agreement became effective, the job of Oil and Grease Mixer appears to have been a one man job. The original incumbent "returned to the Storehouse as a Stores Attendant." A laborer, John Lego, working in the Oil and Mixing Plant was appointed to the position and continued on this position until February 28, 1947. He occupied the position before the present Agreement became effective, during its negotiation and for nearly five years thereafter. As late as January 1, 1947, the incumbent, John Lego, was shown on the Clerks' Group 2 Roster.

The Carrier now says that as early as 1943 it recognized the work covered by this position accrued to shop laborers in the Maintenance and Equipment Department. It goes farther, in its submission, and says "From the time the position of Oil and Grease Mixer was filled by a Group 2 (Miscellaneous Forces) Employee, until 1947 when it was assigned to a Shop Craft Laborer, it was improperly considered a Group 2 position."

It appears that during the war years there was an increase in the volume of work involved in oil and grease mixing. Additional employees were engaged or assigned to this work until the force reached a total of nine. How they came to be related to the Clerks' Agreement is not clear in the record but the record does show that on September 1, 1946, the Carrier and another Organization covering Shop Crafts made an Agreement under which it is now claimed by the Carrier the position in question here is covered. The question with respect to those other positions is not involved here; that is a matter between the Carrier and the Organizations involved. However, taking advantage of the incumbent's retirement in 1947, the Carrier bulletined the position before us to the Shop Crafts and assigned it to them.

The first bulletin was withdrawn because of the Clerks' protest, but a second similar bulletin was issued on the basis of which the assignment was made.

The Carrier maintains this is a manufacturing operation and not a stores operation. The Carrier does not indicate when it became such or how that affects the 1942 Agreement.

There can be little doubt about the convenience or reasonableness of having all work of precisely the same character, such as oil and grease mixing here, under one classification, under common supervision, and under one Agreement. The Carrier and the Organization appear to be in accord on that point. The Organization already has sought to have the other similar positions, covered into an agreement made with another craft in 1946, brought under this Agreement. The Carrier accomplished this, not by agreement as provided for in Rule 9-A-2, but by unilateral action.

Although many Awards have been brought to our attention, we cite none here because this action is so clear a violation of the Agreement of May 1, 1942, decision can rest on its own bottom.

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.

AWARD

Claims (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of October, 1949.