

Award No. 5559

Docket No. CL-5541

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, 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, by assigning Mr. Vanlandingham, Car Repairman, Wilmington Shops, Wilmington, Delaware, Maryland Division, to position of watchman from October 27 to November 14, 1948, inclusive.

(b) C. W. Cycyk be compensated at the rate of time and one-half for eight hours each day of the violation. (Docket E-674.)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representatives 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 the Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act and which has also been filed with the National Railroad Adjustment Board.

This dispute was progressed to the highest operating officers of the Carrier by means of a Joint Submission. This Joint Submission is attached as Employees' Exhibit "A" and will be considered as a part of this Statement of Facts.

During the period October 27 to November 14, 1948, inclusive, the equipment comprising the Freedom Train was at Wilmington Shops. During the time the Freedom Train was in the Wilmington Shops certain repairs were made to trap-doors, hand-holds, etc.

The keys to the Freedom Train were given to a car repairman, Mr. Vanlandingham, who was instructed to open the cars in order to permit access of certain workmen, and to lock the cars when the workmen had completed their work. In other words, Car Repairman Vanlandingham was doing the same

prived of work is not entitled to recover penalties accruing to the employe who actually performs the work where such penalties arise from the fact of his actually performing it. They are personal to such employe and are not a part of the loss sustained by the employe deprived of the work. The latter's loss is the rate the regularly assigned occupant of the position would have received if he had performed the work in the regular course of his employment. The reasoning contained in Award 3193, supports this holding and is reaffirmed. See Awards 2695, 3049, 3222, 3251, 3271, 4196. Awards by other referees to the same effect are: 2346 (Burque), 2823 (Shake), 2859 (Youngdahl), 3232 (Thaxter), 3371, 3375, 3376, (Tipton), 3504, 3505 (Douglas), 3609 (Rudolph), 3745, 3770, 3837 (Wenkle), 3876, 3910 (Yeager), 3890 (Swaim), and 4037 Parker).

The position of the Carrier is correct. An affirmative award at the pro rata rate is in order."

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 covering 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 applicable Agreement, and that the Claimant is not entitled to the compensation which he claims.

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: From October 27 to November 14, 1948, the rolling equipment of the Freedom Train was in the Wilmington Shops for reconditioning, exterior painting, truck work, air brakes and steam heat work, and some minor interior painting and repairs. Passenger car repairman F. Vanlandingham was assigned 3:30 P. M. to 12:00 Midnight to perform Carman's work on this train. In addition thereto he was given the keys to the Freedom Train and directed to permit Electricians and Painters to enter to perform their work but otherwise to keep the cars locked. It is the contention of the Organization that this latter work was that of a Watchman and not of a Carman. Claimant asserts that he should have been assigned the work because of his status as a Store Attendant, Stores Department, Wilmington Shops, performing work within the Clerks' Agreement. Watchmen are within the Clerks' Agreement and Carmen are not. The question to be determined is whether Vanlandingham performed the work of a Watchman.

The Freedom Train was sponsored by the American Heritage Foundation and it was used to exhibit various documents and material of historical value to the public. The train was specially equipped and decorated for the purposes for which it was used. Before the train was sent to the Wilmington Shops, all exhibits and special equipment used to show them were removed from the train and stored. The Carrier states that because of the national importance of the train, it felt the necessity of having an experienced Carman present to make emergency repairs and to prevent damage to the rolling stock. Pursuant to such desire, Vanlandingham was assigned to perform the duties of removing and replacing stainless moldings on platforms, renewing platform linoleum, the repairing of trap doors and hand-holds, the removing and replacing of hardware for repairs, the removing and replacing of overhead continuous grills in connection with the air-conditioning system. In addition, he was directed to provide the standby protection heretofore mentioned.

We think an affirmative Award is required. If the keys to this train had been given to Vanlandingham for the purpose of letting himself and other Carman in and out of the cars in connection with the performance of Carman's work, it would then have been incidental to his work as a Carman. But when he was required to perform such service in connection with the performance of work by other crafts, it was not incidental to the work of Carman and constitutes a violation of the Clerks' Agreement.

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 Agreement was violated.

AWARD

Claim sustained at pro rata rate except for Sundays which will be at the time and one-half rate.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 15th day of November, 1951.

DISSENT TO AWARD NO. 5559—DOCKET NO. CL-5541.

This claim was sustained on basis of a conclusion reading in part:

"* * * If the keys to this train had been given to Vanlandingham for the purpose of letting himself and other Carman in and out of the cars in connection with the performance of Carman's work, it would then have been incidental to his work as a Carman. But when he was required to perform such service in connection with the performance of work by other crafts, it was not incidental to the work of Carman and constitutes a violation of the Clerks' Agreement."

It is undisputed in the record that full complement of "shop watchmen", covered by the Clerks' Agreement, were on duty.

The Award (1) is an expansion of the Scope rule of the Clerks' Agreement and (2) attempts to define the work that a Carman, covered by Shop Craft Agreement, may do.

In our opinion the Award is in error.

/s/ R. M. Butler
/s/ R. H. Allison
/s/ C. P. Dugan
/s/ J. E. Kemp
/s/ A. H. Jones