

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Emmett Ferguson, 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, particularly the Scope, when it assigned or permitted individuals who hold no seniority under the Agreement to check tracks at the International Harvester Company, Indianapolis, Indiana, Southwestern Division, for demurrage purposes.

(b) H. H. Stafford be allowed an eight hour day, as a penalty, retroactive ninety days from April 11, 1950, and for all subsequent dates until the violation is discontinued, in accordance with Rule 7-B-1.

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 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, H. H. Stafford, is an employee holding a regular position of Clerk, Symbol No. B-79-G, tour of duty 6:30 A. M. to 3:30 P. M., with one hour for meal period, rest days Saturday and Sunday, South Street Yard, Indianapolis, Indiana, a position fully covered by the Scope and all of the provisions of the Rules Agreement, and having seniority standing in Group 1 on the Seniority Roster for the present Southwestern Division of the Carrier, which includes the territory of the former Indianapolis Division.

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 Agreement 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 Employee 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 the Scope Rule has not been violated, and that the Claimant is not entitled to the compensation which he claims.

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

All data contained herein have been presented to the employee involved or to his duly authorized representative.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant Stafford demands pay of eight hours a day from January 11, 1950 to date, because Carrier has been having an outsider take its demurrage check of tracks at International Harvester Company, at Indianapolis since 1943. Stafford went on this job January 23, 1950. The demurrage check form used, is provided by the Company and is used together with other data to assess charges against the customer. The time consumed is said by the Carrier to be $\frac{1}{2}$ hour per day. This claim is for "an eight hour day, as a penalty."

There is no doubt that the work is such as is granted to clerks, under the Scope Rule of the Agreement. Accordingly we find that the Agreement has been violated. It is left to decide whether the claim as presented should be completely sustained.

Stafford, or the man assigned to the job at Indianapolis, or his brother clerks who might, conjecturally speaking, have been assigned this work have, by the Carrier's action, been deprived of duties which they might have been able to crowd into their day's work schedule, or failing that would have had a half-hour's work left over for their relief or, in the final alternative would have received one-half hour's overtime per day.

Under these circumstances we are of the opinion that there has been a technical violation of the rules resulting in no loss to the claimant and he is therefore entitled to no penalty; but we also are of the opinion that the matter should be negotiated by the parties if the Carrier does not desist from continuing the practice complained of.

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;

That there has been a technical violation of the rules; and

That claimant has suffered no loss and is entitled to no penalty.

AWARD

Claim sustained as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of November, 1953.