

Award No. 6728

Docket No. CL-6816

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Glenn Donaldson, 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 Rules Agreement, effective May 1, 1942, amended September 1, 1949, by requiring Station Baggage-man, Pennsylvania Station, New York, N. Y., New York Division, to provide work gloves at their own expense to be worn while on duty, under penalty of discipline if not worn.

(b) Joseph Cullity, Station Baggage-man, and all other similar employes in the Baggage Department, Pennsylvania Station, New York, N. Y., for reimbursement for the cost of such gloves at the rate of \$1.69 each 36 days plus pay for one-half hour each 36 days—time required to purchase such gloves—from March 23, 1951, until adjusted.

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimants in this case held positions 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, as amended, covering Clerical, Other Office, Station and Storehouse Employes 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 Claimants in this case are all incumbents of positions of Station Baggage-man or similar title in the Baggage Department, Pennsylvania Station, New York, N. Y., New York Division. Each has seniority standing on the Seniority Roster for the New York Division in Group 2 and each

All data contained herein have been presented to the employees involved or to their duly authorized representatives.

(Exhibits not reproduced).

OPINION OF BOARD: Claim is made that the Carrier violated the Rules Agreement by the actions set forth in the submission. We discover no rule in the Agreement even remotely touching upon the subject before us. We find that the Agreement, therefore, was not violated.

The Organization contends that this subject is one which properly may be presented to this Agency for decision by virtue of an agreement of July 1, 1945, referred to as the Memorandum of Understanding. This Agreement appears to be a redraft of earlier, similar agreements setting up a method of handling disputes within the Pennsylvania Railroad System. Its pertinent provisions read:

(Preamble expression of purpose.)

"* * * for the purpose of setting forth the usual manner of handling disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, up to and including the chief operating officer designated to handle such disputes."

Also Item 5, reading:

"5. In addition to 'disputes growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions,' other questions may be presented and handled in the manner prescribed above, at the monthly meetings." (Emphasis supplied.)

The phrase, commencing with the underlined words, did not appear in the preceding Agreement.

As praiseworthy as the parties' intention to resolve other questions upon the property may be, the provision would seem to go beyond the limits of appellate procedure provided for under the Railway Labor Act used in the manner here attempted, namely, to compel the Carrier to supply gloves gratis or defray the expense thereof. Section 2 (i) of said Act appears to encompass only those subjects listed in the Preamble to the 1945 Agreement and in Item 5 preceding the underlined words, above. Conceivably "other questions" might, under some circumstances, include an appealable question but only because of relationship to some one or more of the purposes expressed in the Act, which we find is not the case here. The Board's creation under the Act was not for the purpose of imposing contract provisions but to construe those negotiated by the parties.

It would seem in the instant case that the Carrier was within its rights, as a safety precaution, in ordering Claimants to wear gloves in the performance of their work. The reasonableness of the regulation could be tested out with a greater degree of finality than the mere expression of opinion made here, if and when the Carrier resorts to the assessment of penalties for its violation.

However, the question of who is to bear the expense involved is unquestionably one for negotiation. We must find that it is not properly the function or within the authority of this Agency to determine the question for the parties in the absence of rule or practice.

We refer to Award 740, Fourth Division, Referee Carter participating, where under similar circumstances a Patrolman was required by bulletin to provide himself with a police uniform. Claim asserted for reimbursement (50%) was denied. The reasoning appearing in the following Awards is

pertinent to the instant case: First Division Award 11444, without referee, where claim was denied for reimbursement for value of personal effects lost as a result of Claimant's regular caboose being taken off Division, without notice being given. Similarly, Award 8183, First Division, without referee. Finally, Award 6392, Third Division (Elkouri).

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 between the parties does not support the claims asserted.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 21st day of July, 1954.