

Award No. 7308

Docket No. CL-6902

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, 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, as amended, particularly the Scope and Rule 2-A-1, by unilaterally removing work accruing to chauffeurs (Group 2 employees) from under the Scope of the Clerks' Rules Agreement and assigning that work to employees of another class or craft as of June 11, 1948.

(b) J. A. Witter be allowed an eight hour day as a penalty for each day until the work is restored, dating from ninety days prior to October 7, 1948. (Docket N-321.)

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 holds 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, J. A. Witter, an employee holding a regular position of chauffeur covered by the Scope of the Clerks' Rules Agreement, has seniority in Group 2 on the New York Division of the Carrier.

Effective April 1, 1933, the Carrier established a motor truck pool service on its New York Division.

This service was placed under the direction of a Supervisor of Motor Truck Service. The Division was divided into two zones--the Eastern Zone and the Western Zone. There was a Dispatcher for each zone.

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

(Exhibits not reproduced.)

OPINION OF BOARD: There is a joint statement of agreed-upon facts in this claim which reads in part as follows:

"Effective June 11, 1948, a new G.M.C. automobile, * * *, equipped with a compartment in the rear of the cab to seat ten (10) men and tool and equipment compartment on both sides, was placed in service in the Electric Traction Department of the Maintenance of Way Department, which is being operated by an employee regularly assigned as an Electrician coming under the Maintenance of Way Department, * * *".

Petitioner contends that effective April 1, 1933 Carrier established a pool of trucks and truck drivers (chauffeurs) and this was done in agreement with the Clerks' Organization and permitted the transfer of some employees in this Truck Service with their seniority from other departments to the Clerks' Agreement. That the function of the truck pool was to furnish general trucking service to all departments and that whenever a department has need for and is furnished a truck from the pool, the truck is operated by a Chauffeur assigned to the pool. And that prior to May 11, 1948, the Maintenance of Way Department placed with the Truck Service on a day-to-day basis an order for a truck for the purpose of transporting Maintenance of Way employees and materials to various locations. That when on May 11, 1948 the new truck was placed in service, a Maintenance of Way chauffeur was assigned to operate the same. That this violated the Clerks' Agreement and a claim was filed which resulted in Award 4904 sustaining employees' claim. Consequently, that the position of Maintenance of Way Chauffeur assigned to this work was abolished effective with the close of business on October 13, 1950, and the truck was thereafter operated by a Miscellaneous Forces Chauffeur. That a like situation was again created by Carrier on June 11, 1948 resulting in this dispute.

It is further contended by Petitioner that the present arrangement was created unilaterally by Carrier without agreement with Petitioner and the Scope and Seniority provisions of the Agreement have been violated. Many awards of the Division are cited in support of the contentions made.

Carrier views the issue to be: Whether the Clerks' Agreement, effective May 1, 1942, even when read in conjunction with the Carrier's instructions of April 1, 1933, includes the exclusive right to the position of Chauffeur with the Carrier under the Clerks' Agreement.

That the Scope Rule of the Agreement specifically limits the position of Chauffeur to the Stores and Station Departments and that the work is reserved to the Maintenance of Way Employees by the terms of their Agreement with the Carrier, and the work in question has never been under the Clerks' Agreement. That when the new method of servicing substations was instituted in 1937, the work of operating G.M.C. Truck No. M/R 68681 was performed by an electrician. When the truck was worn out and G.M.C. Truck No. M/R 51111 took its place, an electrician continued to operate it. That when the Clerks' Organization negotiated its present Agreement, May 1, 1942, it knew of contract provisions of the Maintenance of Way employees with Carrier and this was the reason the position of Chauffeur in the Agreement was limited to Stores and Station Departments, citing in support of its position Award 4978. Also cited are Awards 1140 and 5314. And that the arrangement of April 1, 1933 was never an agreement and accordingly was not incorporated in the Agreement of May 1, 1942, and in the latter agreement it is stated:

"This Agreement supersedes all previous and existing agreements covering employes of the craft or class now represented by the Brotherhood of Railway and Steamship Clerks, * * *."

Cited is Award 6912.

We consider the fact that the work was done for years by the Maintenance of Way Employees is controlling. The situation here presented is that a worn out truck was replaced by a new truck, specifically equipped and designed for service in servicing substations and both trucks were chauffeured by an electrician of the Maintenance of Way craft since the service started. Therefore, the work is being performed as it has in the past and we do not think the rules cited give an exclusive right to Petitioners to this work on the record here presented as the application of the Scope Rule does not have the broad meaning contended for on this record.

The difference between the fact situation in Award 4904 and the instant case is that there, the truck in question had been driven by a chauffeur under the Clerks' Agreement, here, the truck had been operated by an electrician under the Maintenance of Way Agreement since 1937 and had never been operated by a Clerk chauffeur. Several other issues are presented in this record, notably a jurisdictional question on notice to Maintenance of Way Employees and the matter of delay in progressing of the claim which we do not deem it necessary to consider in view of the above Opinion.

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 not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1956.