

Award No. 8331
Docket No. CL-7673

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, 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, except as amended, particularly the Scope, by permitting and requiring Yard Brakemen, not covered by the Clerks Rules Agreement, to perform clerical work at Yard B, Columbus, Ohio, Columbus Division, on first, second and third tricks.

(b) Extra Clerk, J. E. Miller, and other clerks to be named, each to be allowed eight hours' pay as a penalty for October 16, 1952, and all subsequent dates until the violation is corrected. (Docket W-897)

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, except as amended, 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.

Mr. J. E. Miller, Claimant, is assigned to the Group 1 Extra List in the Columbus, Ohio Yards, and has a seniority date on the seniority roster for the Columbus Division in Group 1.

Yard B at Columbus, Ohio, operates on an around-the-clock basis twenty-four hours a day, seven days a week. Each twenty-four hour day is divided into three eight hour shifts that are known as first, second and third tricks.

of four hours, exclusive of the meal period. Such employe required to perform a total of more than six hours' service will be allowed a minimum of eight hours' pay at the pro rata rate.

(e) (Effective September 1, 1949.) When employes paid on a tonnage or piece work basis are allowed compensation on the basis of time and one-half under the provisions of this rule (4-A-6), the compensation allowed will be calculated in accordance with the provisions of Rule 4-A-1 (g)."

Moreover, as set forth in the Joint Statement of Agreed-Upon-Facts of the Joint Submission, quoted in the Carrier's Statement of Facts above, the "cabin men" were discontinued on the second trick on March 1, 1953, and none of the work in dispute has been performed on that trick since that date.

Therefore, in the absence of any express or implied provision of the applicable Agreement requiring the Carrier to compensate the Claimants' eight (8) hours each date as a penalty, it is respectfully submitted that should your Honorable Board decide that the Agreement has been violated in the instant case, the Claimants would only be entitled to a call as provided under Rule 4-A-6 of the Agreement, quoted above, and such compensation would only be payable on such dates that the "cabin men" performed the work in question.

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 in this case would require the Board to disregard the Agreement between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the Agreement. 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 in the instant case and that the Claimants are not entitled to the compensation which they claim.

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

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

(Exhibits not reproduced.)

OPINION OF BOARD: The record shows that for many years prior to October 16, 1952, the date of this claim, and in fact prior to May 1, 1942, the effective date of the Agreement, the work here involved, with the possible exception of hectograph work, has been performed by yard trainmen.

For that reason, and because the question presented seemed substantial enough to entitle the Trainmen to be heard, Award No. 8220 required third party notice to be given to the Brotherhood of Railroad Trainmen. The General Chairman of that Brotherhood having definitely informed this Board that his organization does not desire to appear in the matter, it has been resubmitted on the merits.

The Joint Statement of Facts reads in part as follows:

"For many years prior to October 16, 1952, the starting date of this claim, a Yard Trainman has been regularly assigned to, and carried on the timeslip of the Yard 'B' Westbound Hump Crew, Columbus, Ohio, on the 1st, 2nd and 3rd tricks, and has been referred to by various titles such as 'List Man', 'Pump Handle' or 'Cabin Man', such employees being used to perform the following duties:

"1. Check Cabin Car tracks, Engine Lead and Pocket Track, all located in Yard 'B', and the Eastbound and Yard 'A' Water Tank Tracks, making a written record of the numbers of the Cabin Cars stored in those tracks. The results of said check in the form of the completed list of Cabin Car numbers is then delivered by the so-called 'List Man' to the Yard Master on duty.

"2. From October 16, 1952, the date mentioned in the Subject of this case as the beginning date of the claim, and continuing until March 5, 1953, the 'List Men' (Yard Trainmen) operated the Duplicating (Hectograph) machine located in Yard 'B' Yard Office, to make several copies of the Cabin Car list for switching purposes. One copy of such list was then delivered by the 'List Man' to the Yard 'B' Yard Master, Yard Clerk, Westbound Hump Conductor and a copy of said list retained by the 'List Man'; in addition to the foregoing, a Yard Clerk (Chalker) prepared, with a Hectograph pencil, a switch list (CT-362) containing switching data of all trains and/or cuts of cars arriving Yard 'B', copies of said switch list (CT-362) until March 5, 1953, then being run off by the 'List Men' (Yard Trainmen) on the Duplicating (Hectograph) Machine. Since the foregoing date (3-5-53) this work is assigned to Yard Clerks.

"3. Said 'List Men' (Yard Trainmen) then deliver the 'Duplicated' (Hectograph) switch lists to the Yard 'B' Hump Conductor, 'Cut-Off' man (Hump Yard Brakeman), Tower Operator (Yard Brakeman) (said Tower being located approximately 100 feet west of Yard 'B' Yard Office), Switchtender (Yard 'B'), and Milo Ground Switchtender.

"4. These 'List Men' (Yard Trainmen), make a written record of all defective and repaired Cabin Cars going into or coming out of the Car Shop; also keeps in contact with personnel of the Car Shop with reference to Cabin Cars that are under repair, length of time they may be expected to be out of service, possible date on which they will again be available for service, etc., keeping the Yard Master and all concerned advised accordingly; also keeps Cabin Cars supplied with any needed items, viz., fusees, water cans, flags, oil cans, lamp globes, etc.; keep in contact, via telephone, with other Divisions regarding the handling of Deadhead Cabin Cars, reassignment of Cabin Cars, inbound Cabin Cars that are in service, etc.; also keep in contact with Yard 'B' Yard Master and General Yard Master with reference to crew's Cabin Cars that are stored in a yard other than the Yard from which the Crew's outbound train will be dispatched.

"The duties set forth in the foregoing Items 1, 3 and 4 have been performed subsequent to March 1st, 1953, on the first (1st)

and third (3rd) tricks by the so-called 'List Man' (Yard Trainman). On March 1, 1953, the entire second-trick Yard 'B' Westbound Hump Crew was abolished and has not since been restored. Therefore, the duties mentioned in Items 1, 3 and 4 have not been performed on the second (2nd) trick, subsequent to March 1, 1953 by any employee."

The Rule claimed to have been violated is the Scope Rule, the pertinent provisions of which are as follows:

"These Rules shall constitute an Agreement between The Pennsylvania Railroad Company and its employes of the classifications herein set forth as represented by the Brotherhood * * *:

"Group 1—Clerks as defined in the following paragraph:

"Clerk—an employe who regularly devotes not less than four hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements, and similar work, and to the operation of office mechanical equipment and devices, except as provided in Rule 3-C-2."

Rule 3-C-2 provides that "when a position covered by this Agreement is abolished, the work previously assigned to such position which remains to be performed" may be performed by certain employes not covered by the Agreement "provided that less than 4 hours' work per day of the abolished positions * * * remains to be performed."

Clearly the Agreement covers positions rather than work classifications, as in Awards 7322 and 7338, and the Clerks do not claim the exclusive right to all work ordinarily classified as clerical, since some clerical work is incidental to many other positions.

Some contention is made that the Clerks' right to clerical work is exclusive wherever a Clerk is assigned. But the Agreement makes no such provision. On the contrary, the Scope Rule brings under the Agreement as Clerks only those employes whose positions regularly involve not less than four hours per day of certain defined clerical work.

Since the Scope Rule does not contain an exception to that limitation at stations where there are Clerks, we cannot add such an exception.

The record shows that prior to the effective date of the Agreement the list men had performed all the work in question (except possibly the hectograph work); and there is nothing in the agreement which took the work from them and delivered it to the Clerks.

Where the Scope Rule lists positions rather than work, it is necessary to look to past practice, tradition and custom to determine what work, if any, inures exclusively to employes covered by the Agreement. Awards 4827, 6032 and 6284. Since that is true, an agreement with such a scope rule cannot be deemed to change such past practice, in the absence of clear and unambiguous language to that effect.

In any event, the record does not show that any list man regularly devotes four hours or more per day to clerical work; on the contrary, it shows that the work of a list man claimed to be clerical does not exceed three hours per day.

It is contended that the Carrier's action in assigning the hectograph work to Yard Clerks as of March 5, 1953, constitutes an admission that it belonged to them. It is unnecessary to consider the argument, since in any event the hectograph work did not exceed approximately an hour and a half on any trick, and therefore the hectograph work of any one position cannot have exceeded that amount.

It is contended that the long-continued violation of an Agreement does not bar a remedy. But the question here is not of a violation, but of a practice existing prior to the Agreement and not terminated by it. Consequently, the argument is not pertinent.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1958.