

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roscoe G. Hornbeck, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**THE NEW YORK CENTRAL RAILROAD COMPANY
(Lines West of Buffalo District)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

(a) Carrier violated the provisions of the Rules Agreement effective September 1, 1922, particularly the Scope Rule when it permitted individuals who hold no seniority under the Agreement to check tracks of the Carrier at Institute, West Virginia for the purpose of making records for switching and

(b) That Carrier should now be required to discontinue this practice and assign such work to employees subject to the Agreement between the Carrier and the Brotherhood and

(c) That G. H. Vanater, Jr., J. E. Conley, and W. D. Bradley be allowed as a penalty three (3) hours at punitive rate for August 1, 1953 and for each subsequent date until the violation is discontinued.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as representatives of the class or craft of employees in which the claimants in this case hold positions and the New York Central Railroad, hereinafter referred to as the Brotherhood and the Carrier respectively.

There is in effect a Rules Agreement effective September 1, 1922 as modified or revised effective on various dates, 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 as amended, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered as a part of this Statement of Facts and various rules thereof may be referred to herein from time to time without quoting in full.

Other Third Division Awards, such as Nos. 311, 2029, 2491, 2622, 3343, 4250, 4305, 4439, 5703, 6291, etc., uphold another principle applicable here; i.e., that the function of the Board is only to interpret existing agreement rules and not to revise or amend rules of the Agreement; the Board therefore, may not properly write into the Agreement or interpret its effect to that which is not included therein.

The Carrier affirms that the awards here cited and the facts set forth elsewhere in this ex parte statement, conclusively refute any and all claims of the Organization in this case which involves checking Carrier's yard tracks at Institute.

CONCLUSION:

The Carrier has shown that:

1. There was no violation of rules, and the only rule cited by the Organization, the Scope Rule, does not support the claims;
2. Clerical work required at Institute on the 2nd and 3rd tricks can properly be performed by the regularly assigned 2nd and 3rd trick Telegraphers' Agreement employees;
3. The Carbide Co. Traffic Clerk does not make a check of cars on Main Line or on E-1, or on W-1 and W-1-A south of the Freight Station, or on tracks A and B north of the Freight Station, the only tracks on the Carrier's property in the area;
4. Awards of the Third Division support the Carrier's position;
5. The Organization's position with respect to work performed by the Carbide Co.'s Traffic Clerk and regarding track checks made at Institute is without support and should be denied.

All evidence and data set forth in this statement have been considered by the parties in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: The burden is on the Employees to sustain its claim by proof of each material part thereof.

The charge here is that Traffic Clerks from the Carbide and Carbon Chemical Company physically check the cars of the Carrier on its tracks at Institute and prepare the Shipping Lists for the crews of the Carrier and that this service is reserved to the Bill Clerks of the Carrier at Institute, by the Scope Agreement between the parties.

The record is replete with lists, admittedly Shipping Lists, covering some of the time included in the claim, referable to the tracks on Carrier's property at Institute. Who made the checks and prepared the lists does not appear except from certain of Employees exhibits to which reference is hereinafter made.

A letter from Mr. C. E. Midciff, Employees' exhibit 3, a Substitute Clerk and Substitute Brakeman on switch crews operating out of Charleston,

W. Va., and into the tracks at Institute, covers a period from 1943 to 1945, tends to support the claim that Traffic Clerks from Institute checked cars of the Carrier and prepared Switching Lists for its crews at Institute.

This letter affords no substantive proof of the practice at Institute during the period covered by the claim here under consideration. It might be of some corroborative force, as a course of conduct, and when other basic evidence was forthcoming as to the practice during the time embraced in the claim, inasmuch as there is a denial by the Carrier that such practice was followed during the period involved.

There are sworn statements of Mr. Thomas Lusher, Employees' Exhibit 7, and Mr. Joe M. Earles, Employees' Exhibit 8, former employees of Carrier, both of whom worked at Institute, tending to support part (a) of the Claim of Employees. These statements are dated February 14, 1956 and February 13, 1956, respectively. Also a letter dated February 14, 1956 from Mr. Woodrow D. Bradley, a Claimant, Employees' Exhibit 9, who for three years prior to the date of his letter had, at times, held the Position No. 2 and Relief Clerk and Receiving Clerk at Institute, who says:

"At the time I worked at Institute, I was not requested and did not give the Carbide Traffic Clerks the physical check of the yard. The Traffic Clerks always made switching list for the NYC Train Crews from their check of Carrier's right of way tracks, namely W-1, W-1A and Passing Track, which is a violation of the Clerks' Agreement."

If this last letter is accepted, it affords some proof of the claim of the Employees that the Traffic Clerks of Institute not only physically checked cars of the Carrier on its property there but prepared Switching Lists for the crews upon which they acted. Without these statements and letter there is no proof of the basic claim of the Employees.

All of these statements and letter of Mr. Bradley were submitted long after the presentation of consideration and action on the claim on the property of the Carrier. By the unbroken holdings of this Division these exhibits may not be considered Awards 2099, 4346, 7860. The rule has become so well accepted that it is included in letters from the Secretary of this Division of the Board to interested parties in the various claims.

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 Agreement not shown to have been violated by admissible proof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October, 1959.