

Award No. 9785
Docket No. CL-9232

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph E. Fleming, 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, when it required and permitted Track Supervisors W. Glavin and J. Harper, Assistant Track Supervisors B. McLean and D. Shoop and Trackman F. Giuseppe, to make track checks of all cars in the territories under the jurisdiction of Supervisors Glavin and Harper, on the New York Division on April 11, 12 and 13, 1955.

(b) Five Clerks, to be named by the Brotherhood, should each be allowed eight hours' pay, as a penalty, for April 11, 12 and 13, 1955. (Docket N-405)

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 Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except 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.

W. Glavin and J. Harper are Supervisors of Track, New York Division; B. McLean and D. Shoop are Assistant Supervisors of Track, and F. Giuseppe is a Trackman, New York Division. None of these employes, or their positions, are covered by the Clerks' Rules Agreement.

The Carrier required that a track check of all cars located in sub-divisions 4 and 6 of the New York Division be made, and assigned the work of making the check to employes in the Maintenance of Way Department. W. Glavin, Sup-

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 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 Employees in this case would require the Board to disregard the Agreement between the parties thereto 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 such action.

The Carrier has shown no work was performed by the Track Supervisors, their Assistants or employes under their supervision on the dates involved that accrued to Clerks. The statements of the Employees to the contrary are unfounded and not supported by concrete evidence.

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

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employees, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

(Exhibits not reproduced)

OPINION OF BOARD: The Employees involved in this claim are neither named nor identified.

Where there is no identifiable Claimant in whose behalf the claim is made, there is no proper claim before us and the tendered claim should be dismissed.

This decision to apply only under the particular circumstances of this case.

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 claim must be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1961.