

Award No. 10104

Docket No. CL-9841

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS & 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 assigning the duties of painting and stencilling electric trucks formerly performed by Cooper A. T. Coutz, to employes not covered by the Scope of the Rules Agreement, Eleventh Street Freight Station, Pittsburgh, Pa., former Conemaugh Division.

(b) A. T. Coutz, Cooper, be compensated ten hours' pay at the rate of time and one-half for Saturday, April 3, 1954, and for each subsequent Saturday, as a penalty, until the work in question is restored to our class or craft. (Docket C-782)

EMPLOYEES' 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 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 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 Carrier maintains at Pittsburgh, Pa., one of its largest freight stations designated the Pittsburgh 11th Street Freight Station. At the time this claim was instituted this station was located on the Carrier's Conemaugh Division, but this territory is now a part of the Pittsburgh Region of the Carrier. For the purpose of handling and transferring less than carload freight at this station, the Carrier maintains a large number of electric platform trucks. Gasoline powered Chore Boy trucks were first placed in service at this station during the year 1945. Thirty electric trucks were placed in service during the year

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 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 dispute 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.

CONCLUSION

The Carrier has shown that the work of painting the mechanical equipment here involved does not accrue exclusively to Group 2 Coopers and the Statement of the Employees to the contrary is 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.

All data contained herein have been presented to the employe involved or to his duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Beginning April 2, 1945 a number of gasoline powered platform trucks (Chore Boys) were placed in service at Carrier's 11th Street Freight Station, Pittsburgh, Pennsylvania. Beginning in May 1952 the Chore Boys were replaced by Yale & Towne platform trucks powered by electric storage batteries. As of April 3, 1954, the commencement of the period covered by this claim, there were 65 such trucks in service at this location.

Claimant Coutz is a Group 2 employe holding a Cooper position covered by the Agreement between the Clerks' Organization and the Carrier. Claimant

performed surface painting and stencilling of the subject platform trucks, and also painting of lines on platforms and signs for use in and about the freight station, from the time these trucks were first placed in service in 1945 until shortly before April 3, 1954. All of Claimant's truck painting work was performed on an overtime basis -- generally on Saturday or Sunday.

During the period prior to April 3, 1954 the repair shop forces at this location also performed surface painting of these platform trucks to such extent as was necessary in connection with repairs that were made. In addition, these forces performed all painting of the truck wheels, underframes and battery box interiors. The same forces also handled all painting of other freight station equipment such as portable cranes, forklifts and tractors.

Beginning April 3, 1954 the Carrier introduced a planned program of maintenance for the platform trucks whereby they would be cleaned, repaired and completely painted by the shop forces at this point. Thereafter, Claimant Coutz no longer was assigned any truck painting or stencilling work. Hence, the present claim that the Carrier violated the subject Agreement by removing from the scope thereof work that had been assigned to a Group 2 clerical employe, namely Cooper Coutz.

Neither by express language of the controlling Agreement, by bulletin or otherwise is painting described as a duty of any cooper position. There is no claim that painting is a prescribed duty for any other type of position covered by the Agreement. The functions of a cooper are not regarded in the industry generally to embrace painting. On the Carrier's system as a whole, the majority of the platform truck painting has been performed by employes in the Maintenance of Equipment Department. So far as the record discloses, Claimant Coutz is the only employe covered by the Clerks' Agreement who has done any of such work on the property. As previously noted, Coutz has not done all of the painting of platform trucks even at the subject location.

Under the confronting facts we are constrained to say that the practice whereby the Claimant Group 2 employe performed surface painting and stencilling of platform trucks at the involved location on an overtime basis from April 1945 until shortly before April 3, 1954 did not reserve such work to employes covered by the controlling Agreement. The Carrier, therefore, was not barred from assigning this work to its shop forces to be performed as part of the truck maintenance program handled by the repair shop. The claim will be denied.

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 Employe involved in this dispute are respectively Carrier and Employe 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of October, 1961.