

Award No. 10455

Docket No. CL-10063

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Robert J. Wilson, 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 a Yard Master to weigh cars at La Salle Street Yard, Indianapolis, Indiana, former Southwestern Division, on each of the following dates; September 7, 9, 16, 17, 21 and 28, and on October 9, 13, and 18, 1955.

(b) The Claimant, J. E. Danacker, should be allowed eight hours pay for each day shown above, as a penalty, because of this violation. (Docket 95)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representatives 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.

The Claimant, Clerk J. E. Danacker, is the incumbent of a Relief Clerk position in the yards at Indianapolis, Ind., Southwestern Region. The Southwestern Region is what was formerly known as the Southwestern Division. The Claimant has a seniority date on the seniority roster of the Southwestern Region in Group 1.

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 hereto. To grant the claim of the Employees 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 this dispute. 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 Claimant is not entitled to the compensation which he claims.

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 Claimant, 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 proper record of all of the same.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The parties agreed upon a joint statement of facts which are as follows:

"The claimant was regularly assigned as a relief clerk, protecting the following assignments:

"Sunday and Monday	Position B-23-G, Westbound, Hawthorne Yard, 7:00 A. M. to 3:00 P. M.
Tuesday and Wednesday	Position B-29-G, Transfer Yard, 7:30 A. M. to 3:30 P. M.
Thursday and Friday	Rest days
Saturday	Position B-88-G, La Salle Street Yard, 8:00 A. M. to 4:00 P. M.

"A clerk is employed at La Salle Street Yard on first trick only on position B-88-G, which is represented six days per week.

"Trainmen employed at La Salle Street Yard weighed cars during their tour of duty on first trick on subject date.

"Date	Time	Number of Cars	Conductor
9- 7-55	10:00 A. M.	1	F. C. Headford
9- 9-55	9:30 A. M.	16	"
9-16-55	12:00 P. M.	1	"
9-17-55	1:30 P. M.	22	"

"Date	Time	Number of Cars	Conductor
9-21-55	10:30 A. M.	1	"
9-28-55	2:30 P. M.	20	"
10- 9-55	2:00 P. M.	37	J. S. Gibson, Yardmaster
10-13-55	1:30 P. M.	1	F. C. Headford
10-18-55	10:30 A. M.	1	" "

The Claimant filed this claim on November 1, 1955 alleging that the Scope Rule of the Agreement was violated when they allowed other than members of the Brotherhood of Railway and Steamship Clerks to weigh cars at the La Salle Street Yard in Indianapolis.

The Employes content that since the incumbent position B-88-G performs the duty of weighing cars on his regular assignment Monday through Friday, and the incumbent of the relief position, performs such duty on his regular assignment relieving positions B-88-G on Saturday, then any cars to be weighed on an unassigned day of position B-88-G at La Salle Street Yard belongs to position B-88-G.

The pertinent part of the Scope Rule of the Agreement as it applies to this case reads 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 of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, and shall govern the hours of service, working conditions, and rates of pay of the following positions and employes of The Pennsylvania Railroad Company, subject to such modifications and exceptions as are set forth in Supplemental Agreement "A":

"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. This definition also includes stockmen, shippers and receivers, tallymen, blue printers, baggage checkmen, parcel room attendants or checkers, routemen, receiving and delivery men, foremen and assistant foremen — station or storehouse, excluding shop labor foremen, gang foremen and gang leaders at Altoona Works who supervise shop laborers and storehouse laborers."

To sustain its position we believe it is necessary for the Claimant to prove that the Scope Rule specifically grants to the clerks the exclusive right to weigh cars or that through custom and practice it has been traditionally reserved to them.

It appears on examination of the Scope Rule involved in this case that the rule does not specifically grant to the clerks the exclusive right to weigh cars at the La Salle Street Yard.

It has been held by this Board that where the Scope Rule is general in nature and does not specifically enumerate the functions, the right to work must be decided through tradition, historical practice and custom, and on that issue the burden of proof rests with the Employees.

We have carefully studied the record and it is our opinion that it clearly shows that work of weighing cars at the La Salle Street Yard has been performed by various crafts of Employees and has not been exclusively assigned to and performed by the clerical Employees.

We believe that the Claimants have failed to prove that by practice, custom and tradition the work in question has been reserved to the Clerks.

Further the record reveals that not more than 5 hours and ten minutes a month were allocated to weighing of cars. This would amount to only a few minutes a day. This would not be sufficient in our opinion to constitute a car weighing position under the Scope Rule here involved.

In Award No. 9244 a claim was made against this same Carrier under the same Scope Rule it being charged that some clerical work was being assigned to other crafts. The claim was denied. See also Award No. 8331.

It is our conclusion that under the facts and circumstances of this case that the claim must 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 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 herein; and

That the Contract 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 28th day of March, 1962.