

Award No. 10615
Docket No. CL-10110

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Phillip G. Sheridan, 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 of the Agreement, Rule 2-A-1, and other provisions of the Agreement, when it assigned clerical duties which had previously been performed by Group 1 clerical employees at Penn Coach Yard, Philadelphia, Pa., Philadelphia Region, to Train and Engine Service Employees, effective Sunday, May 22, 1955.

(b) The Claimants in this case, F. G. Mischler, F. J. McLaughlin and John J. Barnett, should be allowed eight hours pay a day from June 18, 1955, to May 26, 1956, inclusive. (Docket 121)

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 Claimants in this case hold positions 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.

Claimants F. G. Mischler, F. J. McLaughlin and John J. Barnett were the incumbents of regular clerical positions of Crew Dispatcher, at Penn Coach Yard, Philadelphia, Pa., Philadelphia Region, prior to May 22, 1955, and have seniority dates on the seniority roster of the Philadelphia Region in Group 1.

OPINION OF BOARD: In May of 1955, there were three Crew Dispatchers employed by the Carrier at the Pennsylvania Station — 30th Street, Philadelphia, Pa., one of their functions prior to their transfer was the witnessing of train crew and engine crew signatures at the Pennsylvania Coach Yard, the latter being their former site of employment. Subsequent to the transfer of the Crew Dispatchers (Claimants herein), the witnessing of signatures was performed by the Conductors of the train crews and by the engineer of the engine crews.

The Claimants allege that the Carrier assigned clerical duties to persons not within their Scope Rule and that they also violated Rule 2-A-1 of the Agreement.

The burden of proving the alleged violation of the rules mentioned in the preceding paragraph rests upon the Organization. An examination of the Scope Rule does not show that this work was exclusively that of the Organization. There is no mention in said rule that it was one of the functions of the Claimants to witness signatures of train and engine service crews. We haven't any substantial evidence in the record to support such an allegation on the part of the Organization.

Does custom, tradition and past practice reserve these clerical duties to the Claimants? We must answer this inquiry in the negative. In order to maintain such a position, the Organization must prove by a preponderance of the evidence that such past practice, tradition and custom was system wide. The evidence in this claim does not support such an allegation. We do not believe that past practice, tradition and custom is proof of reservation of the work in question when it is isolated to a specific area, in order to be established, it must be shown conclusively that past practice, tradition and custom is co-extensive with Carrier system.

In the instant case and in light of the foregoing we feel that no further discussion on the merits or the applicability of other rules is necessary. The Agreement was not violated.

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 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 14th day of May 1962.